THE PRINCIPLES OF AMERICAN DIPLOMACY

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INTRODUCTION

THE present work incorporates substantially the entire text, with few alterations or amendments, of the volume published by the author in 1905 under the title *American Diplomacy: Its Spirit and Achievements*. The narrative in that volume, however, embraces few incidents that occurred later than 1903. The years that have since elapsed have been marked by important events, some of which are destined to be highly influential in shaping the future course of the foreign policy of the United States. The present work brings the history of that policy down to date.

The object of the author in the preparation of the original work, as well as in its revision, has been to set forth and explain the fundamental principles by which the diplomacy of the United States has been governed. Domestic policy and foreign policy are seldom wholly diverse, and foreign policy is in the main profoundly influenced by local interests and ideals. Consequently, just as the internal development of each nation presents some distinctive phase or phases, so we may expect its foreign policy to bear distinctive marks by which it can be identified.

The United States after its advent into the family

of nations promptly satisfied that expectation. In grave and critical conjunctures its foreign policy became identified with certain definite principles, enunciated by the founders of the government, by whom its course was then guided. The promulgation of those principles formed an epoch in international relations; and as they were conceived to be congenial with the spirit of American institutions, and were found to be beneficent in their operation, they were afterwards preserved and developed with remarkable consistency and intelligence of purpose. Down to a comparatively recent time they were regarded as practically immutable.

Of these principles the first and foremost was that of "non-intervention." This term was used inclusively in a twofold sense. It embraced, in the first place, non-interference in the internal affairs of other nations. In this sense, while betokening the revolutionary origin of the government of the United States, it was also intended reciprocally to concede to other nations the right to determine their form of government and otherwise to manage their domestic concerns, each for itself and in its own way. In the second place, it embraced non-participation in the political arrangements between other governments, and above all strict abstention from any part in the political arrangements of Europe.

Of the principle of non-intervention the system of neutrality was a logical derivative, as was also the recognition of governments as existing entities, and

not as legitimate or illegitimate, or as lawful or unlawful, under the local constitution. The Monroe Doctrine itself was but the correlative of the principle of non-participation in European affairs. "Our first and fundamental maxim," said Jefferson, should be "never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cis-Atlantic affairs." By preserving these principles, it was believed that the United States would best contribute to the preservation of peace, abroad as well as at home, and to the spread of liberty throughout the world.

While the text of the present volume is not made up of a continuous recital of events in chronological order, yet that order is followed in the development of each principle; and all the essential or important incidents in the diplomacy of the United States are given. This method has commended itself to the author as a means of communicating to the reader and to the student something more than a dry detail of names, dates, and places. For the most part it is believed that the study of the past yields little beyond a certain familiarity with those elements, which are in themselves of little value. The element of real value is the motives, the thoughts and purposes by which events are inspired.

While an attempt is made in the text to describe and explain transactions with sufficient fullness to enable the reader readily to grasp their significance, there are added, at the end of each chapter, citations

of sources in which the study of the subjects treated can be further pursued.

In view of the importance attached to the relations of the United States with the other countries of this hemisphere, a special chapter has been added to the present work, on the subject of Pan-Americanism. The idea of Pan-Americanism is obviously derived from the conception that there is such a thing as an American system; that this system is based upon distinctive interests which the American countries have in common; and that it is independent of and different from the European system. To the extent to which Europe should become implicated in American politics, or to which American countries should become implicated in European politics, this distinction would necessarily be broken down, and the foundations of the American system would be impaired; and to the extent to which the foundations of the American system were impaired, Pan-Americanism would lose its vitality and the Monroe Doctrine its accustomed and tangible meaning. I say this on the supposition that the Monroe Doctrine is, both geographically and politically, American, its object being to safeguard the Western Hemisphere against territorial and political control by non-American powers. Of this limited application I would adduce as proof not so much the fact that the Monroe Doctrine, although conceived in terms of colonial emancipation, has not prevented the United States and other American governments from forcibly

extending their territorial limits at one another's expense, as to the fact that it has been regarded by the United States as justifying the latter's recent enforcement in Nicaragua, Haiti, Santo Domingo, and elsewhere, of precisely such measures of supervision and control as it is understood to forbid non-American powers to adopt in American countries. Indeed, it has even been maintained that the United States was required so to act for the reason that non-American powers were precluded from seeking the redress of grievances or the amelioration of conditions by such means. Still less has the Monroe Doctrine been assumed to affect the non-American relations of non-American powers, or to touch the relations of independent states generally. Such spheres can be penetrated only with other doctrines, on each of which should be bestowed an appropriate title. Although the poet tells us that the rose by any other name would smell as sweet, he does not assure us that any flower, if called a rose, would become one.

Before proceeding to the body of the work, it may be convenient to say something as to the mechanism of American diplomacy and the organs through which it has been conducted.

Prior to the adoption of the Constitution, the executive as well as the legislative power of the United States resided in the Congress. On December 29, 1775, the Continental Congress appointed a committee of five, called the Committee of Secret Correspondence. for the purpose of communicating

with the friends of the colonies in other parts of the world. This committee was superseded, on April 17, 1777, by the Committee for Foreign Affairs. The committee plan proved to be altogether inefficient. Partly because of the irregular attendance of members upon Congress, it was difficult to get the members of the committee together. In order to remedy the defect, there was created, on January 10, 1781, the Department of Foreign Affairs, to be presided over by a Secretary of Foreign Affairs. The first person to fill this office was Robert R. Livingston, of New York, who was elected to it on August 10, 1781. He entered upon his duties October 20, 1781, and served till June 4, 1783. He was succeeded by John Jay, who assumed charge of the office on September 21, 1784. By the act of Congress of July 27, 1789, under the Constitution, the Department of Foreign Affairs was reorganized and expanded, while by the act of September 15, 1789, its name was changed to the Department of State and the title of the head became Secretary of State. Jay, although he had been appointed Chief Justice of the United States, remained in charge of foreign affairs, under his commission as Secretary of Foreign Affairs, till March 22, 1790, when Jefferson entered upon his duties as Secretary of State.

A list is given below of the Presidents and Secretaries of State. It will be observed that there are frequent gaps between the terms of service of the Secretaries of State. These gaps were filled by the

ad interim designation of some one, perhaps a member of the cabinet, or the chief clerk of the Department of State, or later an assistant secretary, or the counselor, to perform the duties of the office.

The Presidents and their Secretaries of State follow in order of date:

PRESIDENTS	SECRETARIES OF STATE
George Washington, April 30, 1789, to March 3, 1797.	Thomas Jefferson, commissioned Sept. 26, 1789; entered on duties March 22, 1790; served till Dec. 31, 1793.
	Edmund Randolph, Jan. 2, 1794, to Aug. 20, 1795.
	Timothy Pickering, Dec. 10, 1795,—
John Adams, March 4, 1797, to March 3, 1801.	Timothy Pickering (continued) to May 12, 1800.
	John Marshall, May 13, 1800, to March 4, 1801.
Thomas Jefferson, March 4, 1801, to March 3, 1809.	James Madison, March 5, 1801, to March 3, 1809.
James Madison, March 4, 1809, to March 3, 1817.	Robert Smith, March 6, 1809, to April 1, 1811.
	James Monroe, April 2, 1811, to March 3, 1817.
James Monroe, March 4, 1817, to March 3, 1825.	John Quincy Adams, commissioned March 5, 1817; entered on duties Sept. 22, 1817; served to March 3, 1825.
John Quincy Adams, March 4, 1825, to March 3, 1829.	Henry Clay, March 7, 1825, to March 3, 1829.
Andrew Jackson, March 4, 1829, to March 3, 1837.	Martin Van Buren, March 6, 1829, to May 23, 1831.
	Edward Livingston, May 24, 1831, to May 29, 1833.
	Louis McLane, May 29, 1833, to June 30, 1834.
	John Forsyth, June 27, 1834,—

PRESIDENTS	SECRETARIES OF STATE
Martin Van Buren, March 4, 1837, to March 3, 1841.	John Forsyth (continued) to March 3, 1841.
William Henry Harrison, Mch. 4, 1841, to April 4, 1841.	Daniel Webster, March 5, 1841,—
John Tyler, April 6, 1841, to March 3, 1845.	Daniel Webster (continued) to May 8, 1843.
	Abel P. Upshur, July 24, 1843, to Feb. 28, 1844.
	John C. Calhoun, March 6, 1844, to March 10, 1845.
James K. Polk, March 4, 1845, to March 3, 1849.	James Buchanan, commissioned March 6, 1845; entered on duties March 10, 1845; served to March 7, 1849.
Zachary Taylor, March 5, 1849, to July 9, 1850.	John M. Clayton, March 7, 1849,—
Millard Fillmore, July 10, 1850, to March 3, 1853.	John M. Clayton (continued) to July 22, 1850.
	Daniel Webster, July 22, 1850, to October 24, 1852.
	Edward Everett, Nov. 6, 1852, to March 3, 1853.
Franklin Pierce, March 4, 1853, to March 3, 1857.	William L. Marcy, March 7, 1853, to March 6, 1857.
James Buchanan, March 4, 1857, to March 3, 1861.	Lewis Cass, March 6, 1857, to Dec. 14, 1860.
	Jeremiah S. Black, Dec. 17, 1860, to March 6, 1861.
Abraham Lincoln, March 4, 1861, to April 15, 1865.	William H. Seward, March 5, 1861,—
Andrew Johnson, April 15, 1865, to March 3, 1869.	William H. Seward (continued) to March 4, 1869.
Ulysses S. Grant, March 4, 1869, to March 3, 1877.	Elihu B. Washburne, March 5, 1869, to March 16, 1869.
	Hamilton Fish, commissioned March 11, 1869; entered on duties March 17, 1869; served to March 12, 1877.
Rutherford B. Hayes, March 5, 1877, to March 3, 1881.	William M. Evarts, March 12, 1877, to March 7, 1881.

Presidents	Secretaries of State
James A. Garfield, March 4, 1881, to Sept. 19, 1881.	James G. Blaine, commissioned March 5, 1881; entered on duties March 7, 1881,—
Chester A. Arthur, Sept. 20, 1881, to March 3, 1885.	James G. Blaine (continued) to Dec. 19, 1881.
	Frederick T. Frelinghuysen, commissioned Dec. 12, 1881; entered on duties Dec. 19, 1881; served to March 6, 1885.
Grover Cleveland, March 4, 1885, to March 3, 1889.	Thomas F. Bayard, March 6, 1885, to March 6, 1889.
Benjamin Harrison, March 4, 1889, to March 3, 1893.	James G. Blaine, March 5, 1889, to June 4, 1892.
	John W. Foster, June 29, 1892, to Feb. 23, 1893.
Grover Cleveland, March 4, 1893, to March 3, 1897.	Walter Q. Gresham, March 6, 1893, to May 28, 1895.
	Richard Olney, June 8, 1895, to March 5, 1897;
William McKinley, March 4, 1897, to Sept. 14, 1901.	John Sherman, March 5, 1897, to April 27, 1898.
	William R. Day, April 26, 1898, to Sept. 16, 1898.
	John Hay, Sept. 20, 1898,—
Theodore Roosevelt, Sept. 14, 1901, to March 3, 1909.	John Hay (continued) to July 1, 1905.
	Elihu Root, July 7, 1905, to Jan. 27, 1909.
	Robert Bacon, Jan. 27, 1909, to March 5, 1909.
William H. Taft, March 4, 1909, to March 3, 1913.	Philander C. Knox, March 5, 1909, to March 5, 1913.
Woodrow Wilson, March 4, 1913,—	William Jennings Bryan, March 5, 1913, to June 9, 1915.
	Robert Lansing, June 24, 1915,— (Mr. Lansing, who was promoted from the post of counselor, had an *ad interim* designation as Secretary of State from June 9 to June 23.)

AMERICAN DIPLOMACY

THE PRINCIPLES OF AMERICAN DIPLOMACY

I

THE BEGINNINGS

We hazard nothing in saying that not only the most important event of the past two hundred years, but one of the most important events of all time, was the advent of the United States into the family of nations. Its profound significance was not then unfelt, but in the nature of things its far-reaching effects could not be foreseen. Even now, as we survey the momentous changes of the last few years, we seem to stand only on the threshold of American history, as if its domain were the future rather than the past. But, if we would understand the diplomacy of the United States, the principles by which it has in the main been guided, and the distinctive influence which it has heretofore exerted,

we must recur to the work of the original builders. Many nations have come and gone, and have left little impress upon the life of humanity. The Declaration of American Independence, however, bore upon its face the marks of distinction, and presaged the development of a theory and a policy which must be worked out in opposition to the ideas that then dominated the civilized world. Of this theory and policy the key-note was freedom; freedom of the individual, in order that he might work out his destiny in his own way; freedom in government, in order that the human faculties might have free course; freedom in commerce, in order that the resources of the earth might be developed and rendered fruitful in the increase of human wealth, contentment, and happiness.

When our ancestors embarked on the sea of independence, they were hemmed in by a system of monopolies. It was to the effects of this system that the American revolt against British authority was primarily due; and of the monopolies under which they chafed, the most galling was the commercial. It is an inevitable result of the vital connection between bodily wants and human happiness that political evils should seem to be more or less speculative so long as they do not prevent the individual from obtaining an abundance of the things that are essential to his physical comfort. This truth the system of commercial monopoly brutally

disregarded. From the discovery of America and of the passage to the Eastern seas, colonies were held by the European nations only for purposes of selfish exploitation. Originally handed over to companies which possessed the exclusive right to trade with them, the principle of monopoly, even after the power of the companies was broken, was still retained. Although the English colonies were somewhat more favored than those of other nations, yet the British system, like that of the other European powers, was based upon the principle of exclusion. Foreign ships were forbidden to trade with the colonies, and many of the most important commodities could be exported only to the mother-country. British merchants likewise enjoyed the exclusive privilege of supplying the colonies with such goods as they needed from Europe. This system was rendered yet more insupportable to the American colonists by reason of the substantial liberty which they had been accustomed to exercise in matters of local government. Under what Burke described as a policy of "wise and salutary neglect," they had to a great extent been permitted to follow in such matters their own bent. But this habit of independence, practised by men in whom vigor and enterprise had been developed by life in a new world, far from reconciling them to their lot, served but to accentuate the incompatibility of commercial slavery with political freedom. The time was sure to come when

colonies could no longer be treated merely as markets and prizes of war. The American revolt was the signal of its appearance.

But there was yet another cause. The American revolt was not inspired solely by opposition to the system of commercial monopoly. The system of colonial monopoly may in a sense be said to have been but the emanation of the system of monopoly in government. In 1776 Europe for the most part was under the sway of arbitrary governments. Great mutations were, however, impending in the world's political and moral order. The principles of a new philosophy were at work. With the usual human tendency to ascribe prosperity and adversity alike to the acts of government, the conviction had come to prevail that all the ills from which society suffered were ultimately to be traced to the principle of the divine right of kings, on which existing governments so generally rested. Therefore, in place of the principle of the divine right of kings, there was proclaimed the principle of the natural rights of man; and in America this principle found a congenial and unpreoccupied soil and an opportunity to grow. The theories of philosophers became in America the practice of statesmen. The rights of man became the rights of individual men. Hence, our forefathers in their Declaration of Independence at the outset declared "these truths to be self-evident: that all men are created equal; that

they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness," and that "to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

When the United States declared their independence they at once undertook to fulfil one of the necessary conditions of national life by endeavoring to enter into diplomatic relations with other powers. Indeed, even before that event, steps were taken towards the establishment of such relations. On March 3, 1776, the Committee of Secret Correspondence of the Continental Congress instructed Silas Deane, of Connecticut, to proceed to France in the character of a secret agent,[1] and if possible to as-

[1] Deane, who was for some time after his arrival in France to be "engaged in the business of providing goods for the Indian trade," was to preserve the character of a merchant, it being assumed that the French court would not like it to be known that an agent of the colonies was in the country. But, with a letter furnished by Franklin, he was promptly to gain an introduction to "a set of acquaintance, all friends to the Americans," by conversing with whom it was supposed that he would have "a good opportunity of acquiring Parisian French." Meanwhile, through one of them who understood English, he was to seek an immediate audience of M. de Vergennes, Minister of Foreign Affairs, to whom, after exhibiting his "letter of credence," he was in the first instance to make application for a supply of arms and ammunition. In so doing he was to represent the opportunity that might ensue for the development of a large and profitable commerce. (Wharton, Dip. Cor. Am. Rev. II, 78.)

certain whether, if the colonies should be forced to form themselves into an independent state, France would probably acknowledge them as such and enter into a treaty or alliance with them for commerce or defence, or both, and if so on what conditions. These instructions were signed by Benjamin Franklin, Benjamin Harrison, John Dickinson, Robert Morris, and John Jay.

Deane's mission was by no means fruitless; but, after the Declaration of Independence, measures of a more formal kind were taken. On September 17, 1776, Congress took into consideration the subject of treaties with foreign nations, and adopted a plan of a treaty of commerce to be proposed to the King of France. Comprehensive in scope and far-reaching in its aims, this remarkable state paper stands as a monument to the broad and sagacious views of the men who framed it and gave it their sanction. Many of its provisions have found their way, often in identical terms, into the subsequent treaties of the United States; while, in its proposals for the abolition of discriminating duties that favored the native in matters of commerce and navigation, it levelled a blow at the exclusive system then prevailing, and anticipated by forty years the first successful effort to incorporate into a treaty the principle of equality and freedom on which those proposals were based. On the other hand, as if with prophetic instinct, care was taken that the

expansion of the United States in the western hemisphere should not be hampered. The new government, in turning to France for aid, did not labor under misconceptions. It little detracts from our obligations to France, for support afforded us in the hour of peril and need, to say that that support was not and could not have been given by the French monarchy out of sympathy with the principles announced by the American revolutionists. No matter what incipient tendencies may have existed among the French people, there could be on the part of the French government no such sentiment. In one point, however, the French government and the French people were in feeling completely united, and that was the determination if possible to undo the results of the Seven Years' War, as embodied in the peace of Paris of 1763. Under that peace France had given to Great Britain both Canada and the Island of Cape Breton, and had practically withdrawn her flag from the Western Hemisphere. To retrieve these losses was the passionate desire of every patriotic Frenchman; and it was believed by the better-informed among our statesmen that France would overlook the act of revolt and embrace the opportunity to deal a blow at her victorious rival. Nevertheless, in the plan of a treaty to be proposed to France it was expressly declared that the Most Christian King should never invade nor attempt to possess himself of any of the coun-

tries on the continent of North America, either to the north or to the south of the United States, nor of any islands lying near that continent, except such as he might take from Great Britain in the West Indies. With this exception, the sole and perpetual possession of the countries and islands belonging to the British crown was reserved to the United States.

When this plan was adopted, Franklin, Deane, and Jefferson were chosen as commissioners to lay it before the French government; but Jefferson declined the post, and Arthur Lee, who was already in Europe, was appointed in his stead. On December 4, 1776, Franklin, weak from the effects of a tedious voyage, touched the coast of Brittany. He had just reached the Psalmist's first limit of age, and was no stranger to suffering; but, serene in the faith that sustained him in trials yet to come, he entered upon that career which was to add to his earlier renown and shed upon his borrowed years the lustre of great achievements. As soon as his health was sufficiently re-established, he hastened to Paris, where he met his colleagues in the mission; and on December 23 they jointly addressed to the Count Vergennes, then Minister of Foreign Affairs of France, the first formal diplomatic communication made on behalf of the United States to a foreign power.

The plan of a commercial treaty which the commissioners were instructed to submit proved to be unacceptable to France; nor was this strange. The

French government, while maintaining a show of neutrality, had indeed opened its treasury and its military stores to the Americans, under the guise of commercial dealings carried on through the dramatist, Beaumarchais, in the supposititious name of a Spanish firm. Nevertheless, France was still in a state of peace, her commerce unvexed by war, while America was invaded by a hostile army and her independence was yet to be established. She was free at any moment to become reconciled to England, and such a reconciliation was not deemed improbable either in England or in France. Even in America there were not wanting those who expected it. But the course of events swept the two countries rapidly along. The American commissioners, soon after they met in France, were authorized to abandon the purely commercial basis of negotiation and to propose both to France and to Spain a political connection—to the former, in return for her aid, the conquest of the West Indies; and to the latter, the subjugation of Portugal. These new instructions disclosed on the part of the United States a conviction of the necessity of foreign aid of a more direct and extensive kind than could possibly be rendered within the limits of neutrality. While the French government was still hesitating, there came the news of the surrender of Burgoyne at Saratoga. The report reached France early in December, 1777. The signal success of the American arms was the

Sir

Paris, Dec. 23. 1776

10h

We beg leave to acquaint your Excellency, that we are appointed and fully impowered by the Congress of the United States of America to propose and negotiate a Treaty of Amity and Commerce between France and the said States. — The just and generous Treatment their Trading Ships have received by a free Admission into the Ports of this Kingdom, with other Considerations of Respect, has induced the Congress to make this Offer first to France

We

His Excellcy the Count de Vergennes

THE FIRST FORMAL DIPLOMATIC COMMUNICATION MADE ON

We request an Audience of your Excellency wherein we may have an Opportunity of presenting our Credentials, and we flatter ourselves, that the Propositions we are instructed to make, are such as will not be found unacceptable

With the greatest Regard we have the Honour to be,

Your Excellency's most obedient and most humble Servants

B Franklin
Silas Deane
Arthur Lee

turning-point in the negotiations. The American commissioners at once assumed a bolder front. They formally proposed a treaty of alliance, and insisted on knowing the intentions of the French court. The answer of France came on December 17. On that day the American commissioners were informed, by order of the King, that his Majesty had determined to acknowledge the independence of the United States and to make with them a treaty. The negotiations then rapidly proceeded; and on February 6, 1778, there were signed two treaties, one of commerce and the other of alliance. The commercial treaty was the one first signed, and it thus became the first treaty concluded between the United States and a foreign power. The treaty of alliance was signed immediately afterwards. The table on which these acts were performed is still preserved in the French Foreign Office.

In the treaty of commerce, the original views of the United States as to the opening of the colonial trade and the abolition of discriminating duties were by no means carried out; but the terms actually obtained embodied the most-favored-nation principle, and were as liberal as could reasonably have been expected. The treaty of alliance was, however, of a totally different nature, and established between the two countries an intimate association in respect of their foreign affairs. No one doubted that the conclusion of the alliance meant war be-

tween France and Great Britain. France's recognition of the independence of the United States was on all sides understood to be an act of intervention, which the British government would resent and oppose; for, while the United States had declared their independence, they were still in the midst of the struggle actually to secure it. This fact was acknowledged in the treaty itself. Its "essential and direct end" was avowed to be "to maintain effectually the liberty, sovereignty and independence, absolute and unlimited, of the United States, as well in matters of government as of commerce"; and it was agreed that, if war between France and Great Britain should ensue, the King of France and the United States would make it a common cause and aid each other mutually with their good offices, their counsels, and their forces. The American idea as to territorial expansion was, however, preserved. The United States, in the event of seizing the remaining British possessions in North America or the Bermuda Islands, were to be permitted to bring them into the confederacy or to hold them as dependencies. The King of France renounced them forever, reserving only the right to capture and hold any British islands in or near the Gulf of Mexico. In addition to these engagements, the United States guaranteed to France the latter's existing possessions in America as well as any which she might acquire by the future treaty of peace, while France guaranteed to the

United States their independence as well as any dominions which they might obtain from Great Britain in North America or the Bermuda Islands during the war. In conclusion, the contracting parties agreed to invite or admit other powers who had received injuries from England to make common cause with them. This stipulation particularly referred to Spain, France's intimate ally.

The French alliance was beyond all comparison the most important diplomatic event of the American Revolution. It secured to the United States, at a critical moment, the inestimable support of a power which at one time controlled the destinies of Europe and which was still the principal power on the Continent. Only one other treaty was obtained by the United States prior to the peace with Great Britain, and that was the convention of amity and commerce, signed by John Adams, with representatives of their "High Mightinesses, the States-General of the United Netherlands," at The Hague, on October 8, 1782; but the Netherlands were then also at war with Great Britain, and their recognition, though most timely and helpful, was not of vital import. The failure, however, to make other treaties was not due to any lack of effort. Agents were accredited by the Continental Congress to various courts in Europe. John Jay and William Carmichael were sent to Spain; Ralph Izard was appointed to Tuscany; William Lee was directed to test

the disposition of Vienna; Arthur Lee was authorized to sound various courts, including that of Prussia; Francis Dana was bidden to knock at the door of Russia; Henry Laurens was commissioned to the Netherlands. The fortunes and misfortunes of some of these agents form a curious chapter.

There exists a popular tendency to overrate the delights and to underrate the hardships of the diplomatic life; but, however much opinions may differ on this point, there can be no doubt that the office of an American diplomatist in the days of the Revolution was no holiday pastime. If he was not already in Europe, his journey to his post was beset with perils graver than those of the elements. In the eyes of British law, American revolutionists were simply "rebels," the reprobation of whose conduct was likely to be proportioned to their prominence and activity; and the seas were scoured by British cruisers, the dreaded embodiment of England's maritime supremacy. Deane went abroad secretly before independence was declared; but when his presence in France became known, the British government asked that he be seized and delivered up into its custody. Franklin sailed for France on a small vessel of war belonging to Congress, called the *Reprisal*. On the way over she took two prizes, and more than once, descrying a suspicious sail, cleared for action. Had she been captured by the British, Franklin would have had an opportunity to test

the truth of his remark to his associates in Congress, that they must "either hang together or hang separately." Not long after bearing Franklin to France, the *Reprisal* went down with her gallant commander, Captain Wickes, off the banks of Newfoundland. John Adams, on his first journey, took passage on an American vessel; on his second, he embarked in the French frigate *Sensible*, and landed at Ferrol, in Spain. Jay committed his fate to the American man-of-war *Confederacy*, and, like Adams and Franklin, reached his destination. Less fortunate was Henry Laurens.

Laurens was elected minister to the Netherlands in October, 1779, but, owing to the vigilance of the British watch of the American coasts, did not sail till August, 1780, when he took passage on a small packet-boat called the *Mercury*, under the convoy of the sloop-of-war *Saratoga*. When off the banks of Newfoundland, the *Mercury*, then abandoned by her convoy, was chased and seized by the British cruiser *Vestal*. During the pursuit, Laurens's papers were hastily put into a bag, with "a reasonable weight of iron shot," and thrown overboard. The weight, however, was not sufficient to sink them, and they fell into the hands of the captors, by whom they were "hooked up" and delivered to the British government. Laurens himself was imprisoned in the Tower of London. Never did consequences more momentous flow from a confused effort to sup-

ply the want of previous precautions. Among the papers there was a tentative plan of a commercial treaty between the United States and the Netherlands, which William Lee had, on September 4, 1778, agreed upon with Van Berckel, Grand Pensionary of Amsterdam, who had been authorized by the burgomasters to treat. Obviously this act was in no wise binding upon the States-General, and Van Berckel had formally declared that the treaty was not to be concluded till the independence of the United States should be recognized by the English. But trouble had long been brewing between the English and the Dutch; and the British minister at The Hague was instructed to demand the disavowal of the treaty, and the punishment of Van Berckel and his "accomplices" as "disturbers of the public peace and violators of the law of nations." This demand the Dutch declined to grant; and on December 20, 1780, the British government proclaimed general reprisals.

While the persons of our representatives were safe from seizure upon the Continent, they obtained no substantial recognition outside of France and the Netherlands. In 1777 Arthur Lee was stopped by the Spanish government when on his way to Madrid. Jay and William Carmichael were afterwards allowed to reside there, but only as private individuals. In the early days of the Revolution, Spain had given some pecuniary aid at the solicita-

tion of France. That Congress expected to obtain from her further assistance may be inferred from the circumstance that Jay had scarcely left the United States when bills were drawn upon him to a large amount. But, with the exception of an insignificant sum, insufficient to enable him to meet these bills, which Franklin had ultimately to take up, Jay obtained no aid and made no progress. With regard to the Mississippi, Spain demanded an exclusive navigation; but, in spite of the fact that Congress, against Jay's warning that such a course would render a future war with Spain unavoidable, eventually offered in return for an alliance to concede this demand from 31° of north latitude southward, his mission failed. Spain ultimately went to war against Great Britain, but for her own purposes. With a presentiment not unnatural, she to the end regretted the independence of the United States. In a prophetic paper submitted to the Spanish King, after peace was re-established, Count d'Aranda, who was Spanish ambassador at Paris during the American Revolution, said: "The independence of the English colonies has been recognized. It is for me a subject of grief and fear. France has but few possessions in America, but she was bound to consider that Spain, her most intimate ally, had many, and that she now stands exposed to terrible reverses. From the beginning, France has acted against her true interests in encouraging and sup-

porting this independence, and so I have often declared to the ministers of that nation."

While the attitude of Spain towards the Revolution was affected by considerations of her particular interests, it was to a great extent shared by most of the powers of Europe. William Lee went to Vienna, but was not received there. Dana resided for two years at St. Petersburg as a private individual, and obtained nothing beyond one informal interview with the Minister of Foreign Affairs. Izard was dissuaded by the minister of Tuscany, at Paris, from attempting to visit that country, and ended his diplomatic career in unhappy discontent at the French capital. But the greatest misfortune of all was that which befell Arthur Lee at the Prussian capital.

Diplomacy, in the course of time, had lost much of its idle pomp and ceremony, but had gained little in scrupulousness and delicacy. Bribery was still one of its most formidable weapons; but in its treatment of Lee it also employed methods the burglarious grossness of which was mollified only by the histrionic air that pervaded the whole transaction. Great concern was felt by England as to the possible course of Prussia; and when, early in May, 1777, the British government received, through one of its ubiquitous agencies, a report that Lee and Carmichael were about to proceed from Paris to Berlin, the Earl of Suffolk directed Hugh Elliot, the

British minister at the latter capital, to "give every proper attention to their conduct, and the impression which it may make." His lordship added, with that completeness and accuracy of information which characterized all his communications, that Carmichael had "the best abilities," but that Lee was more immediately in the commission of Congress. At the end of May, his lordship wrote that a Mr. Sayre, and not Carmichael, would accompany Lee to Berlin; and Sayre he described as "a man of desperate private fortune, but with the disposition rather than the talents to be mischievous." Sayre was in fact one of those adventurers with whom Lee, through bad judgment, permitted himself often to be associated, with unhappy results. Meanwhile, before Elliot could have received his lordship's second letter, all diplomatic Berlin was agog over the arrival of Lee and a "Mr. Stephens," such being the patronymic under which Sayre, whose Christian name was Stephen, then travelled, while he assumed the character of a banker. Elliot, however, was not deceived; and, with the ardent desire of a young man of twenty-four to show his mettle, he set about his task with diligence and enthusiasm. His suspicions were soon inflamed by learning that Lee had had a private interview with Count Schulenburg and was in correspondence with him, and that Herr Zegelin, formerly Prussian minister at Constantinople, who was supposed to be much employed by

Frederick the Great in confidential negotiations, had come to Berlin "unexpectedly," and taken lodgings not only in the same inn with Lee and Sayre, but even on the same floor. Nor was Elliot reassured when Count Schulenburg, on a certain occasion, turned the conversation to the "report" of the arrival of the "Americans," for the purpose of saying that he knew nothing of it; nor when, still later, he admitted that they had proposed to sell some tobacco at a low price, but declared that the King was "entirely ignorant of their being at all connected with the rebels in America." Elliot, however, had determined to get authentic information at first hand. Through a German servant in his employ, he "gained," as he expressed it, the co-operation of the servants at the inn and of the landlord's wife. By this means he learned that Lee kept his papers, including a journal of each day's transactions, in a portfolio which was usually laid away in a bureau. He therefore had false keys made, both to the door of the chamber and the bureau; and having learned that on a certain day Lee and Sayre were going into the country, where they usually stayed till eleven at night, he sent his German servant to bring away the papers. When the servant reached the inn, some strangers had just arrived, and as he could not enter the door without being seen, he got into Lee's room through a window. He returned with the portfolio about four o'clock. Elliot was at dinner,

duly provided with four guests, "who were all enjoined to the most sacred secrecy, and set to copying instantly," while he himself went about to pay visits and show himself. He was still thus engaged when, calling about eight o'clock at the inn on pretence of seeing a fellow-countryman, Lord Russborough, he found that Lee and Sayre had just arrived. He then assumed the most difficult part of his task. Knowing that the papers had not been returned, he, in company with Russborough, joined Lee and Sayre and endeavored to amuse them with conversation, which he did for nearly two hours, without any introductions, or any disclosure of names, but merely as one who had happened to meet persons speaking the same language. At ten o'clock, however, Lee retired, saying that he must go to his room and write. Soon afterwards Elliot heard a "violent clamor" in the house of a "robbery" and "loss of papers." He then drove home, and, finding most of the papers copied, disguised himself and took them to the mistress of the house, who, being in the plot, told the story that they were left at the door by some one who announced their return through the keyhole and then ran off. Lee appealed to the police, and an inquiry was promptly set on foot. It soon led to the German servant. Elliot, who was not unprepared for this contingency, immediately sent him out of the country, and made to the Prussian government, as well

as to his own, an official explanation of the incident. According to this version, the affair was altogether an accident, due to his own imprudence in saying in the presence of an over-officious servant, that he would give a large sum of money to see Mr. Lee's papers; but, as soon as the "unwarrantable action" of the servant was discovered, the papers were returned. This account naturally found little credence, although diplomatic opinion of the merits of the transaction was said to be much "divided." But the knowledge of the fact that the British government had obtained copies of Lee's papers put an end to the attempt privately to negotiate with the Prussian government, and frustrated the plans for obtaining supplies from Prussian ports.

In the narration of the course of our Revolutionary diplomacy, there yet remains to be mentioned one name, that of Charles William Frederick Dumas. To the people of the United States it is to-day practically unknown; but I do not hesitate to affirm that, with the exception of Adams, Franklin, and Jay, he rendered to the American cause in Europe services more important than did any other man. A native of Switzerland, though he spent most of his life in the Netherlands; a man "of deep learning, versed in the ancient classics, and skilled in several modern languages"; the author and translator of a large number of works, some of which related to America, and the editor of an edition of Vattel, with

a preface and copious notes—he felt at the very beginning the inspiration of the American cause, and from thenceforth dedicated his all to its advancement. When the first report of the Revolution was heard in Europe, he began to employ his pen in its support. Besides publishing and circulating an explanation of its causes, he translated and spread abroad the proceedings of the Continental Congress. Towards the end of 1775, his services were solicited by Franklin, in the name of the Committee of Secret Correspondence, as an agent of the American colonies in the Netherlands. He accepted the commission with the promise of "a hearty good-will and an untiring zeal," adding: "This promise on my part is in fact an oath of allegiance, which I spontaneously take to Congress." Never was oath more faithfully kept. His voluminous reports to Congress, some of which have been published, attest his constant activity. He journeyed from city to city, and from state to state, in the Low Countries, as the apostle of American independence. He lent his aid to Adams as secretary and translator, and later acted as *chargé d'affaires*, exchanging in that capacity for the United States the ratifications of the treaty which Adams had concluded with the Dutch government. And if, when the treaty was made, it represented not merely a perception of material interests, but the sentiment of fraternity commemorated in the medals of the time, the fact was in no small measure due

to the untiring devotion of this neglected advocate of the American cause, to whom some memorial should yet be raised in recognition of his zeal, his sacrifices, and his deserts.

We have seen that in diplomacy, in spite of its supposed precautions, chance often plays an important part. So it happened in the case of the negotiations between England and America for peace. In the winter of 1781–82, a friend and neighbor of Franklin's, Madame Brillon, met at Nice a number of the English gentry. Among these was Lord Cholmondeley, who promised while on his return to England to call upon Franklin and drink tea with him at Passy. On March 21, 1782, Franklin received a note from his lordship, who, in the interview that followed, offered to bear a note to Lord Shelburne, who, as he assured Franklin, felt for him a high regard. Franklin accepted the suggestion and wrote a brief letter, in which he expressed a wish that a "general peace" might be brought about, though he betrayed no hope that it would soon take place. But at this moment the political situation in England was somewhat tumultuous. The American war was becoming more and more unpopular; and on March 20th Lord North resigned. In this emergency George III. sent for Lord Shelburne. Shelburne advised that Lord Rockingham be called to the head of the cabinet, and declared the recognition of American independence to be indispensable.

Rockingham was made Prime-Minister, and Shelburne became Secretary for Home and Colonial Affairs. The Foreign Office was given to Charles James Fox. Franklin's letter to Shelburne was written without knowledge of the significant change then taking place in the British ministry. Soon afterwards news came of Shelburne's entrance into the cabinet; but Franklin thought no more of his letter till the second week in April, when a neighbor appeared and introduced a Mr. Oswald, who after some conversation handed Franklin two letters, one from Shelburne and the other from Henry Laurens. The letter from Shelburne, besides commending Oswald as an honest and capable man, expressed his lordship's desire to retain between himself and Franklin the same simplicity and good faith which had subsisted between them in transactions of less importance.

Although Fox has always been regarded with affection in America as a friend of the colonists, it was fortunate that the negotiations fell into the hands of Shelburne. Associated in his earlier career with men of reactionary tendencies, he afterwards became an eminent representative of the liberal economic school of which Adam Smith was the founder. As often happens, this change in his position gave rise to suspicions as to his sincerity. Lacking the vehemence which characterized Fox, and which gives even to the most flexible conduct the

air of passionate sincerity, Shelburne was a man of high intellectual power, who followed the dictates of reason rather than the impulses of feeling. No better evidence could be adduced of the sincerity of his desire to treat on the most liberal basis than his choice of Richard Oswald as a negotiator. Ingenuous and impulsive, in the end the British cabinet was obliged to send an assistant to withdraw some of his concessions. On the part of the United States, authority to negotiate for peace had been given to Adams, Franklin, Jay, and Laurens. Jay arrived in Paris late in June, 1782, and for a time thereafter, owing to the illness of Franklin, the negotiations fell chiefly into his hands. But on July 6th Franklin presented to Oswald certain propositions, three of which were put forward as necessary, and two as advisable. The former were (1) the acknowledgment of independence, (2) a settlement of the boundaries, and (3) freedom of fishing; the advisable stipulations were (1) free commercial intercourse and (2) the cession of the province of Canada to the United States, partly in payment of war claims and partly to create a fund for the compensation of loyalists whose property had been seized and confiscated. The negotiations continued substantially on these lines till Adams, fresh from his triumphs in the Netherlands, joined his associates in the commission. He arrived in Paris, October 26, 1782. The British government had then conceded (1) independence,

(2) a settlement of the boundaries, (3) the restriction of Canada to its ancient limits, and (4) freedom of fishing on the banks of Newfoundland and elsewhere. There still remained open the questions (1) of the right to dry fish on the British coasts, (2) the payment of debts due to British subjects prior to the war, and (3) the compensation of the loyalists. To the last measure Franklin was unalterably opposed, and whenever it was pressed brought up his proposition for the cession of Canada. Adams was equally insistent upon the right of drying and curing fish on the British coasts. The question as to the payment of debts grew out of the acts of sequestration passed by certain States during the Revolution for the purpose of causing debts due to British creditors to be paid into the public treasuries. The lawfulness of this transaction became a subject of controversy in the peace negotiations, especially in connection with the claims of the loyalists for compensation for their confiscated estates. Franklin and Jay, though they deprecated the policy of confiscating private debts, hesitated on the ground of a want of authority in the existing national government to override the acts of the States. But, by one of those dramatic strokes of which he was a master, John Adams, when he arrived on the scene, ended the discussion by suddenly declaring, in the presence of the British plenipotentiaries, that he "had no notion of cheating anybody"; and that,

while he was opposed to compensating the loyalists, he would agree to a stipulation to enable the British creditors to sue for the recovery of their debts. Such a stipulation was inserted in the treaty. It is remarkable not only as the embodiment of an enlightened policy, but also as the strongest assertion in the acts of that time of the power and authority of the national government. The final concession as to the fisheries was also granted upon the demand of Adams, who declared that he would not sign a treaty on any other terms. Before the close of the negotiations, Henry Laurens arrived in Paris; and there, on November 30th, he joined his three colleagues in signing, with Richard Oswald, the provisional articles of peace. It has often been said that of all the treaties Great Britain ever made, this was the one by which she gave the most and took the least. It brought, however, upon Shelburne and his associates the censure of the House of Commons, and caused the downfall of his ministry.

The articles were signed by the American commissioners without consultation with the French government. In taking this course, the commissioners acted in opposition to their instructions. Their action was due to suspicions first entertained by Jay, but in which Adams, who besides was little disposed to defer to Vergennes, participated. Franklin, although he does not appear to have shared the feelings of his colleagues, determined to act with

them. The question whether they were justified has given rise to controversies perhaps more voluminous than important. Every source of information has been diligently explored in order to ascertain whether the suspicions of Jay were, in fact, well or ill founded. This test does not, however, seem to be necessarily conclusive. In law, the justification of an act often depends not so much upon the actual as upon the apparent reality of the danger. The principal ground of Jay's distrust was a secret mission to England of Rayneval, an *attaché* of the French Foreign Office, and an especial representative of Vergennes. Jay suspected that Rayneval had been sent to London to learn from Shelburne the views of the American commissioners, and to assure him of the support of France if he should reject their claims to the fisheries and the Mississippi. The disclosure in recent years of Rayneval's reports to Vergennes has shown that his mission had other objects, though it is no doubt also true that the government of France, mindful of its own historic contentions, as well as of the interests of its other ally, Spain, regarded the claims of the Americans as excessive and was indisposed to support them. But whether the conduct of the American commissioners was or was not justifiable, it aroused the indignation of the French government. "You are about to hold out," wrote Vergennes to Franklin, "a certain hope of peace to America without even

informing yourself of the state of negotiations on our part. You are wise and discreet, sir; you perfectly understand what is due to propriety; you have all your life performed your duties. I pray you to consider how you propose to fulfil those which are due to the King. I am not desirous of enlarging these reflections. I recommend them to your own integrity." No paper that Franklin ever wrote displays his marvellous skill to more advantage than his reply to these reproaches. While protesting that nothing had been agreed in the preliminaries contrary to the interests of France, he admitted that the American commissioners had "been guilty of neglecting a point of *bienséance*." But as this was not, he declared, from want of respect to the King, whom they all loved and honored, he hoped that it would be excused, and that "the great work, which has hitherto been so happily conducted, is so nearly brought to perfection, and is so glorious to his reign, will not be ruined by a single indiscretion of ours." And then he adds this adroit suggestion: "*The English, I just now learn, flatter themselves they have already divided us.* I hope this little misunderstanding will therefore be kept a secret, and that they will find themselves totally mistaken."

When the provisional articles of peace were signed, the American commissioners hoped subsequently to be able to conclude a commercial arrangement.

This hope proved to be delusive. On September 3, 1783, the provisional articles were formally converted into a definitive peace. The old system, embodied in the Navigation Act, England even yet was not ready to abandon. It still dominated Europe, and confined the New World outside of the United States. Years of strife were to ensue before it was to fall to pieces; and in the course of the conflict the United States was to stand as the exponent and defender of neutral rights and commercial freedom.

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II

THE SYSTEM OF NEUTRALITY

BETWEEN 1776, when independence was proclaimed, and 1789, when the government under the Constitution was inaugurated, the United States entered into fourteen treaties — six with France, three with Great Britain, two with the Netherlands, and one each with Sweden, Prussia, and Morocco; but a majority of all were negotiated and signed in France, at Paris or at Versailles. Eight were subscribed, on the part of the United States, by two or more plenipotentiaries; and among their names we find, either alone or in association, that of Franklin, ten times; the name of Adams, seven times; that of Jefferson, three times; and that of Jay, twice. These early treaties covered a wide range of subjects, embracing not only war and peace, and, as did those with France, political alliance, but also commercial intercourse and the rights of consuls. Among their various stipulations, we find provisions for liberty of conscience, and for the removal of the disability of aliens in respect of their property and their business. Stipulations for the mitigation of the evils of war are

numerous. A fixed time is allowed, in the unfortunate event of hostilities, for the sale or withdrawal of goods; provision is made for the humane treatment of prisoners of war; the exercise of visit and search at sea is regulated and restrained; the acceptance by a citizen of the one country of a privateering commission from the enemy of the other is assimilated to piracy; and an effort is made to limit the scope of belligerent captures at sea. But, prior to the establishment of the Constitution, it was easier for the United States to make treaties than to enforce them. In spite of the engagement of the treaty of peace, that his Britannic Majesty should with "all convenient speed" withdraw his "armies, garrisons and fleets" from the United States, important posts within the northern frontier continued to be occupied by the British forces; and when the government of the United States protested, the British government pointed to the refusal of the State courts to respect the treaty pledge that British creditors should meet with no lawful impediment to the recovery of their confiscated debts. For similar reasons, the act of the United States in sending John Adams, soon after the peace, as minister to the court of St. James, remained unreciprocated.

The termination of the period of divergence and of incapacity for uniform action among the several States came none too soon. Perils were close at hand, the disruptive impulses of which the old con-

federation could not have withstood. They were even to test the efficacy of the new Constitution. In 1789, when that instrument was put into operation, France was in the first throes of the great revolution which was eventually to involve all Europe in a struggle of unprecedented magnitude and severity. What attitude was the United States to hold towards this impending conflict? Even apart from the treaties with France of 1778, the question was fraught with grave possibilities. For generations, Europe had been a vast battle-ground, on which had been fought out the contests not only for political but also for commercial supremacy. Of the end of these contests, there appeared to be no sign; nor, in spite of their long continuance, had the rights and duties of non-participant or neutral nations been clearly and comprehensively defined. Indeed, so intricate were the ramifications of the European system that, when discords arose, it seemed to afford little room for neutrality. The situation of the United States was essentially different. Physically remote from the Old World, its political interests also were detached from those of Europe. Except as it might be drawn into disputes affecting the fate of existing colonies or the formation of new ones in America, it was not likely to become embroiled in European wars. Not only, therefore, did it enjoy the opportunity to be neutral, but its permanent interest appeared

to be that of neutrality; and the importance of preserving this interest was greatly enhanced by the necessity of commercial and industrial development. The new nation, though born, was yet to demonstrate to a world somewhat sceptical and not altogether friendly its right and its power to live and to grow. It was easy to foresee that its enterprise would penetrate to the farthest corners of the globe, and that its commerce, overspreading the seas, would be exposed to hazards and vexations of which the most uncertain and potentially the most disastrous were those arising from the exorbitant pretensions of belligerents. To resist these pretensions would fall to the lot of a neutral power; and upon the results of this resistance would depend the right to be independent in reality as well as in name, and to enjoy the incidents of independence.

In circumstances such as these it is not strange that Washington and his advisers watched with anxiety the progress of the French Revolution, as, growing in intensity and in violence, it encountered, first, the agitated disapprobation, and then the frantic opposition of other powers. It was not till 1793, when England entered into the conflict, that the war, by assuming a distinctively maritime form, raised a question as to the obligations of the United States under the treaties with France; but, long prior to that event, popular feeling in America was deeply stirred. Although the treaties of 1778 were

made with Louis XVI., yet in the sounds of the French Revolution the American people discerned a reverberation of their own immortal declaration. From Boston to Savannah, there were manifestations of the liveliest sympathy and enthusiasm. To set bounds to this tendency, obviously would require the exercise of unusual prudence and firmness on the part of those intrusted with the affairs of government. America had fought for freedom, but her statesmen were not mere doctrinaires. Their aims were practical. They understood that the peaceful demonstration of the beneficence of their principles, in producing order, prosperity, and contentment at home, was likely to accomplish far more for the cause of liberty than an armed propagandism, which perchance might ultimately degenerate into military despotism. It was therefore important to avoid premature commitments. To a perception of this fact is no doubt to be ascribed the appointment by Washington, on January 12, 1792, of Gouverneur Morris as minister to France. In his own country Morris had been a supporter of the Revolution, a member of the Continental Congress, assistant to Robert Morris in the management of the public finances, and a member of the Constitutional Convention of 1787. From the beginning, however, he had exhibited a distrust of the revolution in France. He instinctively recoiled from the excesses that were committed when his forebodings

came to be fulfilled. Before he became minister of the United States, he offered his counsel to Louis XVI., in a sense directly antagonistic to the Revolution; and he afterwards sought to effect that monarch's escape. Such a man could not be acceptable to the revolutionary leaders; but he at any rate possessed an intimate knowledge of the conditions and tendencies of the time, and was not likely to commit his government to extravagant policies.

Early in 1793 a new minister was appointed by France to the United States. His name was Edmond C. Genêt. Of Morris he was in many respects the precise antithesis; for, while by no means destitute of experience, he was a turbulent champion of the new order of things. According to his own account, he was placed at the age of twelve years in the French Foreign Office, where, under the direction of his father, he translated into French a number of American political writings. After spending seven years at the head of a bureau at Versailles, under the direction of Vergennes, he passed one year at London, two years at Vienna, one at Berlin, and five in Russia. At St. Petersburg, however, he fell into difficulties. Because of some of his representations, which were pitched too high in the revolutionary scale, the Empress Catherine requested his recall, and, when it was refused, dismissed him. In reporting his departure for the United States, Morris observed that "the pompousness of this embassy

could not but excite the attention of England." What it was that called forth this remark does not appear; but, whatever it may have been, there can be no doubt that Genêt set out on his mission gurgling with the fermentation of the new wine of the Revolution; and he had scarcely left France when Morris reported that the Executive Council had sent out by him three hundred blank commissions for privateers, to be distributed among such persons as might be willing to fit out vessels in the United States to prey on British commerce.

On April 18, 1793, before this report was received, Washington submitted to the various members of his cabinet a series of questions touching the relations between the United States and France. These questions were, first, whether a proclamation of neutrality should issue; second, whether a minister from the republic of France should be received; third, whether, if received, he should be received unconditionally or with qualifications; fourth, whether the treaties previously made with France were to be considered as still in force. At a meeting of the cabinet, on April 19th, it was determined, with the concurrence of all the members, that a proclamation of neutrality should issue, and that the minister from the French Republic should be received. On the third question, Hamilton, who was Secretary of the Treasury, was supported by Knox, the Secretary of War, in the opinion that the

reception should be qualified, while Washington, Jefferson, his Secretary of State, and Randolph, the Attorney-General, inclined to the opposite view; but the third and fourth questions were postponed for further consideration. In a subsequent written opinion Hamilton argued that the reception of Genêt should be qualified by an express reservation of the question whether the treaties were not to be deemed temporarily and provisionally suspended by reason of the radical change in conditions since they were formed. He also thought the war plainly offensive on the part of France, while the alliance was defensive. On the other hand, Jefferson maintained that the treaties were not "between the United States and Louis Capet, but between the two nations of America and France," and that "the nations remaining in existence, though both of them have since changed their forms of government, the treaties are not annulled by these changes." He also contended that the reception of a minister had nothing to do with this question.

On April 22, 1793, Washington issued his famous proclamation of neutrality. On April 8th, just two weeks before, Genêt had arrived at Charleston, South Carolina; but the news of his presence there reached Philadelphia through the public press only on the day on which the proclamation was published. At Charleston he lost no time in fitting-out and commissioning privateers; and, after having got

THE SYSTEM OF NEUTRALITY

22d April, 1793.

By the PRESIDENT of the United States of America.

A PROCLAMATION.

WHEREAS it appears that a ſtate of war exiſts between Auſtria, Pruſſia, Sardinia, Great-Britain, and the United Netherlands, of the one part, and France on the other, and the duty and intereſt of the United States require, that they ſhould with ſincerity and good faith adopt and purſue a conduct friendly and impartial toward the belligerent powers:

I have therefore thought fit by theſe preſents to declare the diſpoſition of the United States to obſerve the conduct aforeſaid towards thoſe powers reſpectively; and to exhort and warn the citizens of the United States carefully to avoid all acts and proceedings whatſoever, which may in any manner tend to contravene ſuch diſpoſition.

And I do hereby alſo make known that whoſoever of the citizens of the United States ſhall render himſelf liable to puniſhment or forfeiture under the law of nations, by committing, aiding or abetting hoſtilities againſt any of the ſaid powers, or by carrying to any of them thoſe articles, which are deemed contraband by the *modern* uſage of nations, will not receive the protection of the United States, againſt ſuch puniſhment or forfeiture: and further, that I have given inſtructions to thoſe officers, to whom it belongs, to cauſe proſecutions to be inſtituted againſt all perſons, who ſhall, within the cognizance of the courts of the United States, violate the Law of Nations, with reſpect to the powers at war, or any of them.

L. S.

IN TESTIMONY WHEREOF *I have cauſed the Seal of the United States of America to be affixed to theſe preſents, and ſigned the ſame with my hand. Done at the city of Philadelphia, the twenty-ſecond day of April, one thouſand ſeven hundred and ninety-three, and of the Independence of the United States of America the ſeventeenth.*

G°. WASHINGTON.

By the Preſident.

TH: JEFFERSON.

a number ready for sea, he proceeded to the seat of the national government by land. On the way he incited the people to hostility against Great Britain, and received such demonstrations of sympathy as to strengthen his confidence in the success of the course on which he had entered.

The posture of affairs between the United States and France was complicated and difficult. By the treaty of commerce of 1778, the ships of war and privateers of the one country were entitled to enter the ports of the other with their prizes, without being subjected to any examination as to their lawfulness, while cruisers of the enemy were in like circumstances to be excluded, unless in case of stress of weather. By the treaty of alliance, the United States, as has been seen, had guaranteed to France her possessions in America. For the moment, however, the situation was much simplified by reason of the fact that the French Republic did not ask of the United States the execution of the territorial guarantee. This may be accounted for by either of two reasons. The general arming of the whole population and the exhaustive devotion of the resources of the country to military purposes had caused a scarcity in France both of money and of provisions. The United States, as a neutral, formed a source of supply of both. An intimation to this effect was made by the French government to Morris not long before the issuance of Washington's proclamation of

neutrality; and the same idea was strongly expressed in a report of the French Minister of Foreign Affairs, in June, 1793, in which it was said that the United States became "more and more the granary of France and her colonies." But there may have been yet another reason. It is not improbable that the National Assembly, while balancing the advantages of American neutrality against those of the treaty of alliance, doubted whether the guarantee was precisely applicable to the conditions then existing. This doubt is suggested by the original instructions to Genêt, which, although they were given before the conflict with England began, were written in contemplation of hostilities with that country as well as with Spain; and in these instructions, which looked to the formation of a new commercial and political connection with the United States, adapted to the conditions which the French Revolution had produced, Genêt was directed to bring about "a national agreement, in which two great peoples shall suspend their commercial and political interests, and establish a mutual understanding to defend the empire of liberty, wherever it can be embraced."

When Genêt arrived in Philadelphia, an unqualified reception was promptly accorded him. In presenting his letters of credence, he stated that his government knew that "under present circumstances" they had a right to call upon the United

States for the guarantee of their islands, but declared that they did not desire it; in a subsequent communication, he proposed that the two peoples should, "by a true family compact, establish a commercial and political system" on a "liberal and fraternal basis." The administration, however, was indisposed to quixotic enterprises. On the contrary, it was soon fully occupied with its efforts to vindicate its proclamation of neutrality, which was constantly violated by the fitting-out of privateers, the condemnation of prizes by French consuls sitting as courts of admiralty, and even by the capture of vessels within the jurisdiction of the United States. These proceedings, in which he was himself directly implicated, Genêt defended as being in conformity not only with the treaties between the two countries, but also with the principles of neutrality. When Jefferson cited the utterances of writers on the law of nations, Genêt repelled them as "diplomatic subtleties" and as "aphorisms of Vattel and others." He especially insisted that, by the treaty of commerce of 1778, the authorities of the United States were precluded from interfering in any manner with the prizes brought into their ports by the French privateers. The United States, on the other hand, denied that the contracting parties, in agreeing that prizes should not be subject to examination as to their lawfulness, deprived themselves of the right to prevent the capture and condemnation of vessels

in violation of their own neutrality and sovereignty.

In the correspondence to which these differences gave rise, Jefferson, always perspicacious in his deductions from fundamental principles, expounded with remarkable clearness and power the nature and scope of neutral duty. Its foundations he discovered in two simple conceptions—the exclusive sovereignty of the nation within its own territory and the obligation of impartiality towards belligerents. As it was "the *right* of every nation to prohibit acts of sovereignty from being exercised by any other within its limits," so it was, he declared, "the *duty* of a neutral nation to prohibit such as would injure one of the warring powers." Hence, "no succor should be given to either, unless stipulated by treaty, in men, arms, or anything else, directly serving for war." The raising of troops and the granting of military commissions were, besides, sovereign rights, which, as they pertained exclusively to the nation itself, could not be exercised within its territory by a foreign power, without its consent; and if the United States had "a right to refuse permission to arm vessels and raise men" within its ports and territories, it was "bound by the laws of neutrality to exercise that right, and to prohibit such armaments and enlistments."

Such, briefly summarized, was the theory of neutral duty formulated by Jefferson. But the admin-

istration did not stop with the enunciation of doctrines. It endowed them with vitality. Acknowledging the obligation of the government to make indemnity for any losses resulting from its previous failure to cause its neutrality to be respected, it adopted efficacious measures to prevent the future fitting-out of privateers in the ports of the United States, to exclude from asylum therein any that had been so equipped, and to cause the restitution of any prizes brought by them within the national jurisdiction. To insure the enforcement of these rules, instructions were issued by Hamilton to the collectors of customs; and on June 5, 1794, there was passed the first Neutrality Act, which forbade within the United States the acceptance and exercise of commissions, the enlistment of men, the fitting-out and arming of vessels, and the setting on foot of military expeditions, in the service of any prince or state with which the government was at peace. In due season compensation was made to British subjects for the injuries inflicted by French privateers in violation of American neutrality. "The policy of the United States in 1793," says the late W. E. Hall, one of the most eminent of English publicists, "constitutes an epoch in the development of the usages of neutrality. There can be no doubt that it was intended and believed to give effect to the obligations then incumbent on neutrals. But it represented by far the most advanced existing opin-

ions as to what those obligations were; and in some points it even went further than authoritative custom has up to the present day advanced. In the main, however, it is identical with the standard of conduct which is now adopted by the community of nations."

Against the course of the administration Genêt did not cease to protest; and, while he was himself its first victim, his misfortunes may serve as a warning to foreign ministers who may be disposed to reckon upon popular support in opposing the government to which they are accredited. There was indeed in his case much to mislead a judgment which, no matter how honest it may have been, was not well balanced. To the superficial observer it might have seemed that there were in the United States few Americans; that the population was almost wholly composed of partisans of France and partisans of Great Britain, the former constituting a vast majority; and that the administration, which was daily assailed with a virulence that knew neither restraint nor decency, might safely be flouted and defied. But when, convinced that the proclamation of neutrality would be faithfully enforced, Genêt denounced the government for the "cowardly abandonment" of its friends, and, besides expressing contempt for the opinions of the President, persisted in questioning his authority, Morris was instructed to ask for his recall. The

French government not only granted the request, but expressed disapprobation of Genêt's "criminal proceedings"; and his successor, M. Fauchet, demanded his delivery-up for punishment. This the United States refused "upon reasons of law and magnanimity." Genêt maintained, and with much reason, that he had acted in conformity with his instructions, which in reality contemplated the organization of hostile enterprises in the United States against Spain as well as against Great Britain. Nevertheless, he did not return to France, but settled in the United States, where he married the daughter of an eminent American statesman and spent the remainder of his days. It is only just to say that he has been the subject of much unmerited obloquy. In circumstances exceptionally trying, his conduct was ill-advised, but not malevolent. William Cullen Bryant, speaking in 1870, said that he remembered Genêt very vividly, as he appeared forty-five years before, when he came occasionally to the city of New York. "He was," said Bryant, "a tall man, with a reddish wig and a full, round voice, speaking English in a sort of oratorical manner, like a man making a speech, but very well for a Frenchman. He was a dreamer in some respects, and, I remember, had a plan for navigating the air in balloons. A pamphlet of his was published a little before the time I knew him, entitled 'Aërial Navigation,' illustrated by an engraving of a balloon shaped like a fish, pro-

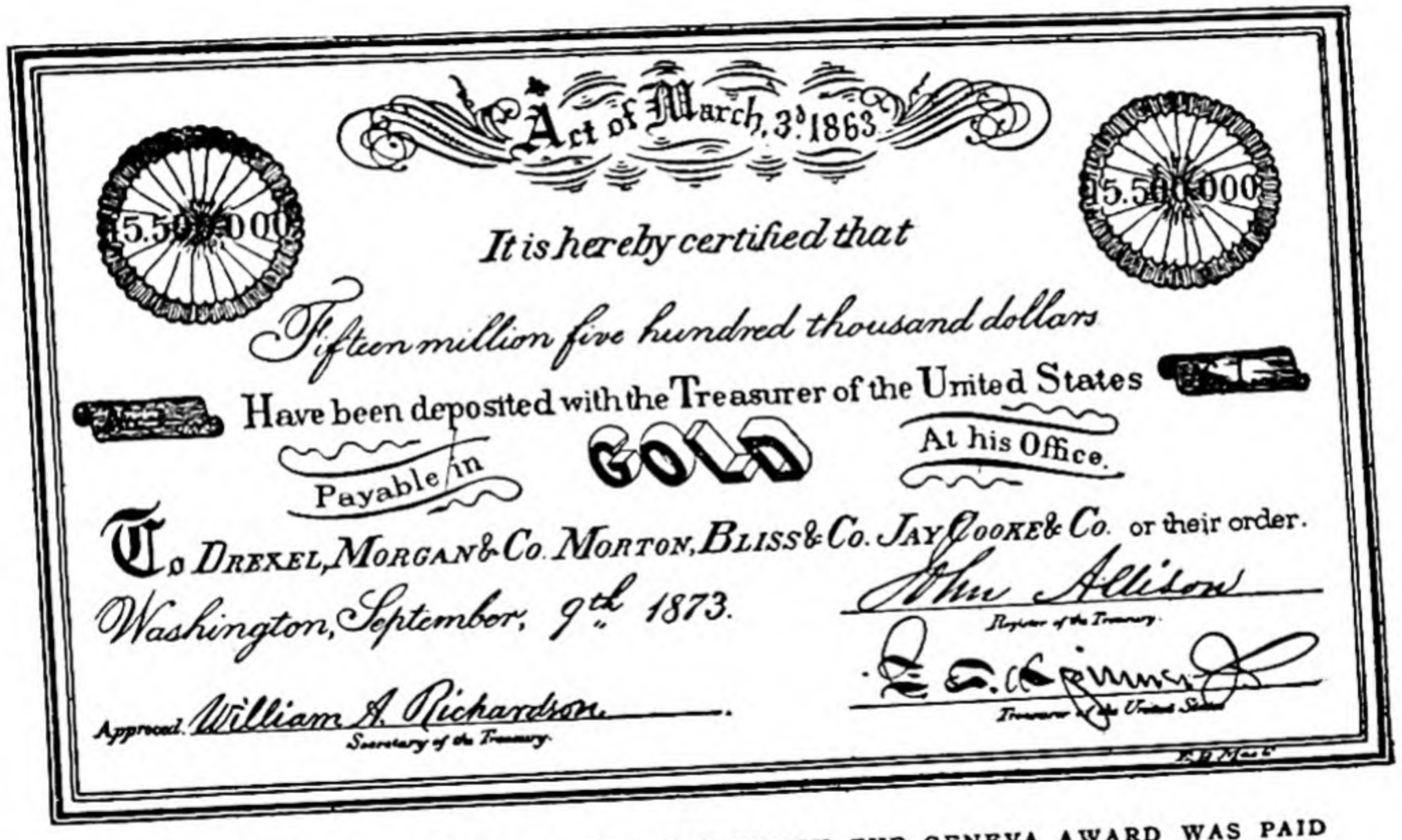
pelled by sails and guided by a rudder, in which he maintained that man could navigate the air as well as he could navigate the ocean in a ship."

The authorities of the French Republic took advantage of the request for Genêt's recall to ask for Morris's withdrawal. Under the circumstances, this act of reciprocity was ungrudgingly conceded. Morris was succeeded in France by James Monroe.

The Neutrality Act of 1794, though originally limited in duration, was afterwards extended, and was then continued in force indefinitely. In order to meet conditions arising out of the war of the Spanish colonies in America for independence, an additional act was passed in 1817; but this, together with all prior legislation on the subject, was superseded by the comprehensive statute of April 20, 1818, the provisions of which are now embodied in the Revised Statutes of the United States. A similar act was passed by the British Parliament in the following year; laws and regulations were from time to time adopted by other governments; and the duties of neutrality became a fixed and determinate part of international law. The severest test of the system, as the ultimate standard of national obligation and responsibility, was made in the case of the claims of the United States against Great Britain generically known as the "*Alabama* Claims," growing out of the depredations of the *Alabama* and other Confederate cruisers fitted out in British ports

during the American civil war. The government of the United States, in demanding indemnities for these depredations, could point to the precedent of 1793; but in the case of the *Alabama* claims the amounts involved were enormous, and the British government besides denied that it had been guilty of any neglect. By the treaty of Washington, of May 8, 1871, the question was submitted to arbitration at Geneva. The treaty declared that a neutral government was bound to use "due diligence" in the performance of its duties. The tribunal found that there had been negligence on the part of the British authorities in respect of three of the cruisers —the *Alabama*, the *Florida*, and the *Shenandoah* after she left Melbourne—and awarded the United States $15,500,000. For the depredations of the French privateers in 1793 the United States paid to the subjects of Great Britain $143,428.11. The amount was relatively small, but its payment, on considerations of international obligation and good faith, established a principle incalculably important, and, like the seed received into good ground, brought forth a hundredfold, and even more.

It is perhaps not generally known that the *Alabama*, in spite of the omission of the English customs authorities to seize her, might in the end have been detained but for an act of wifely devotion. On the 22d and 24th of July, 1862, evidence directly inculpating the vessel was communicated by the Amer-


Act of March, 3d 1863
15.500.000
15.500.000
It is hereby certified that
Fifteen million five hundred thousand dollars
Have been deposited with the Treasurer of the United States
Payable in
GOLD
At his Office.
To Drexel, Morgan & Co. Morton, Bliss & Co. Jay Cooke & Co. or their order.
Washington, September 9th 1873.
John Allison
Register of the Treasury.
Approved. William A. Richardson
Secretary of the Treasury.

FACSIMILE OF COIN CERTIFICATE WITH WHICH THE GENEVA AWARD WAS PAID

ican legation in London to the British Foreign Office. On the 23d and 26th of July the papers were referred to the law officers of the crown, and, as the law officers had no permanent office, were sent as usual to the senior officer, who was then Sir John Dorney Harding, Queen's Advocate, his associates being Sir William Atherton, Attorney-General, and Sir Roundell Palmer, afterwards Lord Selborne, Solicitor-General. Unfortunately, Sir John Harding had just then fallen a victim to an acute mental disorder, which proved to be fatal, but which his wife, in the hope that it would soon pass away, had kept a secret. Upon the decision to be rendered by the law officers there hung, perchance, the issues of peace and war and the fate of nations; but the papers lay unexamined at Sir John's residence apparently till the 28th of July, when the Foreign Office, growing anxious at the delay, but ignorant of its cause, took steps to recover them and placed them in the hands of Sir William Atherton. On the evening of the same day, Sir William, perceiving the gravity of the situation, which the papers disclosed, called Sir Roundell Palmer into consultation upon them in the Earl Marshal's room in the House of Lords. They at once agreed that the vessel must be seized. An opinion to that effect was delivered to Earl Russell on the morning of the 29th of July; but during the night of the 28th, the *Alabama*, as if conscious of what was impending, left the docks in which she had been lying. At ten

o'clock on the morning of the 29th she put to sea. The order of the Foreign Office to detain her reached Liverpool in the afternoon.

The government of the United States, in 1793, had barely entered upon the performance of the duties of neutrality when it was swept into the vortex of the great struggle, which was to last almost unbroken for more than twenty years, for the maintenance of neutral rights. In this momentous contest there was involved the ever-recurrent question, which will continue in some form to arise as long as wars are waged, as to how far neutral powers are required to subordinate the interests of their commerce to the hostile interests of belligerents. That powers at peace were entitled to trade with powers at war was not denied, but the rule was subject to exceptions. It was admitted that a belligerent might cut off all trade with the enemy's ports by blockading them, and might also prohibit the carriage of contraband to the enemy. For entering or attempting to enter a blockaded port, the penalty was confiscation of vessel and cargo, while the carriage of contraband entailed the loss of the prohibited articles and the freight, if nothing more. There was, however, no precise and general agreement either as to what constituted a blockade, or as to what articles were to be considered as contraband. If blockades could be legally established merely by decrees on paper, without the application

of force, or if the list of contraband could be sufficiently extended, it is obvious that the right of neutrals to trade with belligerents could be reduced to the shadow of a tantalizing supposition. Grotius, often called the father of international law, had divided articles, with reference to the question of contraband, into three classes: First, articles that were directly useful in war, as arms; second, those that were useless in war; and third, those that could be "used both in war and in peace, as money, provisions, ships, and articles of naval equipment." Concerning the first and second classes there was no dispute, except as to the possible inclusion or exclusion of some particular article; but as to the third class there had been a long and heated controversy, especially respecting provisions.

There was also a question as to whether the goods of an enemy might be seized on board a neutral ship. It was conceded that a belligerent power might capture vessels belonging to subjects of the enemy, as well as other private property of the enemy at sea; but for many years an effort had been in progress to introduce the rule, denoted by the phrase "free ships free goods," that the merchandise of an enemy should, unless contraband of war, be exempt from seizure when transported by a neutral vessel. In 1780, the Empress Catherine of Russia issued a famous declaration concerning neutral rights. Since the days when Peter the

Great, barbarian, statesman, and seer, diversified his studies in shipbuilding by riding through Evelyn's hedges in a wheelbarrow and pulling the teeth of his own retinue, Russia had aspired to become a maritime power. The declaration of the Empress Catherine afforded a striking manifestation of that ambition. Affirming the right of neutrals to trade with the powers at war, it sought to limit the scope of contraband, declared that blockades must be maintained by a force sufficient to render access to the blockaded port dangerous, and adopted the rule of free ships free goods. On this manifesto there was based an alliance of neutral powers, called the Armed Neutrality, the formation of which was one of the most notable events of the wars growing out of the American Revolution; and although the alliance was not effectively maintained, the principles which it consecrated possessed vitality, and were destined to survive an ordeal yet more severe than any to which they had ever been subjected.

By a decree of the National Convention of France, of May 9, 1793, the commanders of French ships of war and privateers were authorized to seize merchant vessels laden with provisions bound to an enemy's port, or with merchandise belonging to an enemy. This decree was defended on the ground of a scarcity of provisions in France, but it ran counter to the views of the United States concerning the freedom of trade as well as to treaty stipula-

tions. Morris remonstrated against it, and intimated that it would be followed with eagerness by France's maritime enemies. His prognostication proved to be correct. By an order in council of June 8, 1793, the commanders of British cruisers were authorized to seize all vessels laden with grain, flour, or meal, bound either to a port in France or to a port occupied by the French arms. It is true that, by the terms of both these measures, the provisions, if neutral-owned, were to be paid for; but the compensation promised was far less than the cargo would have brought at the port of destination. Moreover, the order in council was followed, as was also the decree, by other measures yet more vexatious.

Out of these perilous complications Washington sought to find a way by negotiation. John Jay, then Chief-Justice of the United States, was sent to London, where, on November 19, 1794, he concluded a treaty under which an aggregate amount of perhaps more than eleven million dollars was eventually obtained from the British government on account of maritime captures. The treaty, however, gave great umbrage to France, not only because it granted privileges of asylum to British ships of war and recognized the right to capture enemies' goods in neutral vessels, but also because it definitely fixed the position of the United States as a neutral. The resentment of the French government was soon made

manifest by measures which prefigured the Berlin and Milan decrees of Napoleon. By a decree of the Executive Directory of July 2, 1796, which laid the foundation of a new series, it was announced that the cruisers of France would treat neutral vessels, as to searches, captures, and confiscation, in the same manner as their governments should suffer the English to treat them. The French government also recalled its minister from the United States and reduced the grade of the mission. Monroe, too, was recalled, and in his place was sent Charles Cotesworth Pinckney.

When, in December, 1796, Pinckney arrived in Paris, the Directory refused either to receive him or to permit him to stay at the capital as a private alien; and he retired to Amsterdam to await developments. Desirous, however, of trying all possible means of conciliation, President John Adams, while recommending to Congress the consideration of effectual measures of defence, joined Elbridge Gerry and John Marshall with Pinckney in a special mission. The three envoys arrived in Paris October 4, 1797. Four days later they were unofficially received by Talleyrand, who was then Minister of Foreign Affairs; but he subsequently intimated that they could not have a public audience of the Directory till their negotiations were concluded. Meanwhile, they were waited upon by three men who came sometimes singly and sometimes together, and

who professed to represent Talleyrand and the Directory. These persons are known in the correspondence as X, Y, and Z. Their approach was prepared by W, who called on Pinckney and vouched for X as a gentleman of credit and reputation, in whom great reliance might be placed. On the evening of the same day X called, and, professing to speak for Talleyrand, suggested confidentially a plan of conciliation. He represented that certain passages in President Adams's recent speech to Congress, at which two members of the Directory were exceedingly irritated, would need to be softened; that a sum of money, to be at the disposal of Talleyrand, would be required as a *douceur* for the ministry, except Merlin, the Minister of Justice, who was already making enough from the condemnation of vessels; and that a loan to the government would also be insisted on. X stated, however, that he communicated with Talleyrand not directly, but through another gentleman, in whom Talleyrand had great confidence. This gentleman proved to be Y, who afterwards called with X upon the American plenipotentiaries and presented the propositions in writing. Y also dilated upon the resentment produced by the President's speech, but declared that, after the plenipotentiaries had afforded satisfaction on that point, they must pay money, "a great deal of money." In so saying he referred to the subject of a loan. Concerning the *douceur* little was said, it

being understood that it was required for the offi-
cers of government, and therefore needed no further
explanation. An impression perhaps widely pre-
vails that at this point Pinckney exclaimed, "Mill-
ions for defence, but not a cent for tribute," and
broke off the negotiations. The story is a pretty
one, but is inaccurate. The sentiment in question,
which resembles a phrase used by Jefferson, when
Secretary of State, in his correspondence with the
Barbary powers, was pronounced as a toast at a
public dinner given to Marshall, at Philadelphia, on
his return from France. In reality, the American
plenipotentiaries, although they repulsed the solicita-
tions of personal venality with the reply, "No, no,
not a sixpence," offered to consult their govern-
ment with regard to a loan, if the Directory would
suspend its measures against American commerce.
This the Directory refused to do. Negotiations
were ended; the treaties between the two countries
were abrogated by the United States; and there
succeeded the state of limited war which prevailed
from 1798 till 1800.

The respite which commerce enjoyed from bel-
ligerent depredations after the Peace of Amiens was
of brief duration, and the renewal of war, in 1803,
was ere long followed by measures which retain in
the history of belligerent pretensions an unhappy
pre-eminence. The "rule of the War of 1756," by
which Great Britain had assumed to forbid neutrals

to engage during war in a trade from which they were excluded in time of peace, was enforced by the British admiralty courts with new stringency under cover of the doctrine of continuous voyages. Moreover, the British government in 1806, in retaliation for a decree of Prussia, which was issued under Napoleonic compulsion, excluding British trade from that country, declared the mouths of the Ems, the Weser, the Elbe, and the Trave to be in a state of blockade. On November 21, 1806, Napoleon fulminated from the imperial camp at Berlin a decree declaring the British Islands to be in a state of blockade and prohibiting all commerce and correspondence with them. Great Britain replied by an order in council of January 6, 1807, forbidding neutral vessels to trade between ports in the control of France or her allies; and by still another order, November 11, 1807, she forbade such vessels to trade with the ports of France and her allies, or even with any port in Europe from which the British flag was excluded, without a clearance obtained in a British port. Napoleon's answer was the Milan decree of December 17, 1807, by which it was declared that every vessel that had submitted to search by an English ship, or consented to a voyage to England, or paid any tax to the English government, as well as every vessel that should sail to or from a port in Great Britain or her possessions, or in any country occupied by British troops, should be deemed good prize.

These measures, with their bald assertions of paper blockades and sweeping denials of the rights of neutrality, the United States, as practically the only remaining neutral, met with protests, with embargoes, with non-intercourse, and finally, in the case of Great Britain, which was aggravated by the question of impressment, to which President Madison gave so much prominence in his war message, with hostile resistance, while from France a considerable indemnity was afterwards obtained by treaty. The pretensions against which the United States contended are no longer justified on legal grounds. Since the Declaration of Paris of 1856, it has been universally admitted that a blockade, in order to be valid, must be effective. The right of neutrals to trade with belligerents is acknowledged, subject only to the law of contraband and of blockade.

There is one radical limitation to belligerent activities, which, although often urged, has not yet been adopted. This is the inhibition of the capture of private property at sea. Strongly advocated by Franklin, it was introduced into the first treaty between the United States and Prussia, in the signature of which he was associated with Adams and Jefferson. John Quincy Adams, Henry Clay, William L. Marcy, and Hamilton Fish are among the great Secretaries of State who have given the principle their support. President McKinley, in his annual mes-

sage of December 5, 1898, suggested to Congress that the Executive be authorized to correspond with the governments of the principal maritime powers of the world with a view to incorporate it into the permanent law of civilized nations. This recommendation was cordially renewed by President Roosevelt in his annual message of December 7, 1903, in which the exemption, except as to contraband of war, was advocated not only as a matter of "humanity and morals," but also as a measure altogether compatible with the practical conduct of war at sea.

The American delegates to the first Peace Conference at The Hague, in 1899, although the subject was not on the program, were authorized "to propose to the conference the principle of extending to strictly private property at sea the immunity from destruction or capture by belligerent powers which such property already enjoys on land, as worthy of being incorporated in the permanent law of civilized nations." The delegation accordingly submitted a proposition to "exempt from capture or seizure on the high seas, or elsewhere," by armed vessels or by military forces, all private property except (1) contraband of war and (2) vessels and cargoes attempting to enter a blockaded port. The conference, regarding this as a proposal to declare "the inviolability of private property in naval warfare," took no action beyond the expression of a wish (*vœu*) that the subject might be "referred to a subsequent conference for consideration."

On April 28, 1904, the Congress of the United States adopted a resolution expressing the opinion that it was desirable that the President should endeavor to bring about an understanding among the principal maritime powers for the incorporation into "the permanent law of civilized nations" of "the principle of the exemption of all private property at sea, not contraband of war, from capture or destruction by belligerents." This resolution was quoted in Mr. Hay's circular of October 21, 1904, suggesting the calling of the Second Hague Conference, and also in the instructions given on May 31, 1907, to the delegates of the United States to that conference, who were authorized to advocate the proposition submitted by the American delegation at the first conference. In conformity with these instructions, the proposal was duly presented and pressed, but without success. Mr. Scott, the technical delegate of the United States, in his narration of the work of the conference, states that the failure "was due solely to the fact that large maritime powers such as Great Britain, Japan, and Russia, and in a lesser degree France, were unwilling to renounce the right of capture of private property, either as a means of preventing a resort to arms or of shortening the war by bringing the enemy to terms."

Still another, and a somewhat curious, phase of the subject is dealt with in the report of the delegation of the United States. Among the measures formulated by the conference and signed by a num-

ber of the delegations, but not by that of the United States, is a convention regulating the transformation of vessels of commerce into vessels of war. The report states that the delegation of the United States would, perhaps, have signed this convention had not the conference regarded it as a "corollary" of the Declaration of Paris of 1856, which undertook to abolish the practice of privateering, and as a guarantee against a return to that practice. The delegation, in a formal statement to the conference, pointed out that the United States had never adhered to the Declaration of Paris or renounced the right to resort to privateering, but, in conformity with instructions, offered to vote for the abolition of the practice, in case the conference "should establish the inviolability of private property on the seas," subject, of course, to the law of contraband and of blockade. The report of the delegation intimates, however, that the government of the United States is under a disability to agree by treaty to the abolition of privateering, because the Constitution confers upon Congress the power, which has repeatedly been exercised, to "grant letters of marque and reprisal," that is to say, privateering commissions. If this be so, it is not clear why the disability does not preclude an abandonment of the thing authorized to be done. Letters of marque and reprisal never were regarded as being, like trinkets and ornaments, an end in themselves. They are merely the appropriate documentary evidence of authority

to carry on war in a certain way. But the particular method of warfare to which they relate is neither more sacred nor more constitutional than any other method contained in the grant of war powers to Congress, which clearly embrace the capture of private property at sea. On the contrary, to agree generally to forego such capture would involve a far greater relinquishment of power than would the renunciation of a particular method of capture.

In reality, the suggested constitutional difficulty seems to lack substance. To say nothing of the fact that the regulation of methods of warfare would appear to be peculiarly within the treaty-making power, the principle of interpretation on which the doubt is suggested appears to be radically unsound and to belong in the category of notions which tend to bring constitutional law into disrepute. That the United States cannot internationally agree to forego the exercise of any power which the Constitution has conferred on Congress, or other department of government, is a supposition contradicted by every exercise of the treaty-making power since the government came into existence. When we reflect upon the number and extent of the powers conferred upon the national government, and upon their distribution and the methods prescribed for their exercise, it is obvious that the attempt to act upon such a supposition would exclude the United States from any part in the progress of the world through the amelioration of law and practice by international action.

Immediately on the outbreak of war in Europe, in August, 1914, the President of the United States issued the normal proclamation of neutrality; but controversial questions soon arose concerning the rights as well as the duties of neutrals. The safety of ships was imperilled by the placing of mines in the open seas, each belligerent charging its adversaries with the first overt act. As early as August, 1914, the British authorities gave warning of danger from mines in the North Sea, and on November 2d the British Admiralty, alleging that the Germans had scattered mines there indiscriminately, issued a notice declaring that the entire North Sea must be considered a "military area," within which merchant shipping would be exposed to danger from mines as well as from war-ships searching for suspicious craft. Sailing directions were given for ships wishing to trade with Norway, the Baltic, Denmark, and Holland.

The age-long dispute as to contraband was revived, particularly as to foodstuffs, which fall in the "conditional" category of things not subject to capture unless intended for the consumption of military or naval forces. An attempt to deal comprehensively with this subject was made in the Declaration of London (1909), and, although the declaration had not been ratified, the United States proposed that the belligerents should individually adopt it. Austria-Hungary and Germany substantially assented on condition of reciprocity.

Great Britain conditioned her assent upon certain modifications judged "indispensable to the efficient conduct" of her naval operations. The United States on October 22, 1914, withdrew its proposal, declaring that it would rely on "the existing rules of international law" and its treaties.

Apparently with a view to make a test case, a ship called the *Wilhelmina* was, early in 1915, loaded in the United States with foodstuffs for Germany. On her way she was seized by the British authorities, and her cargo sent to a prize court. On February 4th the German government, while denouncing Great Britain's conduct of commercial warfare as illegal, announced that, just as England had declared the North Sea to be a "military area" Germany would, in retaliation, treat the waters surrounding Great Britain and Ireland, including the entire English Channel, as a "war zone," wherein, after February 18th, every enemy merchant-ship would be destroyed, and even neutral ships would be exposed to danger because of the misuse of neutral flags which the British government was said to have ordered. February 10th the United States replied that if German vessels of war, assuming a misuse of the American flag, should "destroy on the high seas an American vessel or the lives of American citizens," the United States would view the act "as an indefensible violation of neutral rights," for which it would hold the German government "to a strict accountability"; and an assurance was requested

"that American citizens and their vessels" would not be molested "otherwise than by visit and search." On the same day the United States, referring to the report that the captain of the British steamship *Lusitania*, acting under governmental orders, had lately raised the American flag in order to evade German submarines, requested the British government to endeavor to restrain British vessels from so doing in the sea area defined in the German declaration. The German government, in reply, justified its decree on the ground that, as Germany, "with the toleration, tacit, or protesting," of neutrals, was illegally cut off from all oversea supplies, it was her right to use all means at her disposal to prevent supplies, particularly of war materials, from reaching Great Britain and her allies, but admitted that the measure adopted for this purpose would involve danger, even to neutral vessels, and expressed the hope that the United States would forestall all trouble by bringing about the observance of the Declaration of London.

Subsequently, the United States proposed to the British and German governments the following provisional arrangement: Both were to agree strictly to limit the use of mines, to refrain from employing submarines against merchant-vessels except for visit and search, and to restrain such vessels from misusing neutral flags, while, if Germany agreed that imported foodstuffs should be consigned to agencies to be designated by the United States for distribu-

tion solely to retail dealers licensed to sell them only to non-combatants, Great Britain was not to interfere with their transportation. The German government, on March 1st, accepted with certain reservations; but, on the same day, the British ambassador at Washington, affirming that the German war-zone decree substituted "indiscriminate destruction for regulated capture," gave notice that the British and French governments, having in contemplation "retaliatory measures," would "hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin." This purpose was amplified in the British order in council of March 11, 1915, designed "to prevent commodities of any kind from reaching or leaving Germany." The word "blockade," which means the real cutting off, by a sufficient force, as to all or part of an enemy's coasts, of ingress or egress by vessels of all nations, is not found in this order. It was used by Sir Edward Grey in an explanatory memorandum, in which he spoke of "the measures of blockade" authorized by the order; described its "object" as being "to establish a blockade to prevent vessels from carrying goods for or coming from Germany"; and stated that Great Britain and her allies would not impose the penalty of blockade, which is confiscation of ship and cargo, but would "restrict their claim to the stopping of cargoes destined for or coming from Germany." The interruption of commerce would, he said, be carried

out by "controlling by a cordon of cruisers all passage to and from Germany," without sacrifice of neutral ships or non-combatant lives. The disposition made of the cargoes would be governed by the circumstances.

May 7, 1915, the *Lusitania* was torpedoed and sunk off the Irish coast, without warning, by a German submarine. Before her departure from New York the German ambassador published in the press a warning to passengers not to sail on her. Over a hundred American citizens lost their lives. The United States on May 13th demanded a disavowal of the act, reparation for the injuries inflicted, and immediate steps to prevent the recurrence of such an event. The note in which these demands were presented spoke of "the practical impossibility of employing submarines in the destruction of commerce without disregarding those rules of fairness, reason, justice, and humanity which all modern opinion regards as imperative"; adverted to the "surprising irregularity" of the warning published by the German ambassador; and remarked that the Imperial German government would not expect the United States "to omit any word or any act necessary to the performance of its sacred duty of maintaining the rights of the United States and its citizens and of safeguarding their free exercise and enjoyment."

Answering on May 28th, the German government, while expressing sorrow for the loss of Americans,

contended that the *Lusitania* was in effect built as an auxiliary cruiser and was armed, that she had aboard Canadian troops and a quantity of ammunition whose explosion hastened her sinking, that American lives were sought to be used as a protection for war materials, and that British vessels had secret instructions to ram submarines. Before the reply of the United States was made, Mr. Bryan resigned as Secretary of State, explaining his action upon the ground of his belief that the position which the government was assuming would lead to a conflict. He was succeeded by Mr. Robert Lansing, who had held the post of counsellor for the Department of State. The reply of the United States to the German note bears date of June 9th. It did not repeat the intimation, made in the note of May 13th, that submarines could not lawfully be used as commerce-destroyers, but, while remarking that "nothing but actual forcible resistance or continued efforts to escape by flight when ordered to stop for the purpose of visit" had ever been held to forfeit the lives of the passengers and crew of a merchantman, maintained that only "actual resistance to capture or refusal to stop when ordered to do so for the purpose of visit could have afforded the commander of the submarine any justification for so much as putting the lives of those on board the ship in jeopardy"; denied that the *Lusitania* was armed; and declared that the United States could not admit that the proclamation of a war zone might be made to operate as "an abbreviation

of the rights either of American shipmasters or of American citizens bound on lawful errands as passengers on merchant-ships of belligerent nationality." Germany (July 8th) offered to instruct her submarines to permit the safe passage of American passenger-steamers, at the same time expressing the hope that the United States would guarantee that they did not carry contraband, and proposed to include in the offer neutral steamers, and if necessary four enemy steamers, all under the American flag. The United States (July 21st), attacks on other vessels having meanwhile taken place, declined this offer, expressed the expectation that the German government would no longer delay disavowal of the act of its naval commander and reparation for the American lives lost, and said that the repetition of such acts would be regarded as "deliberately unfriendly."

September 1, 1915, the German ambassador gave the following assurance: "Liners will not be sunk by our submarines without warning and without safety of the lives of non-combatants, provided that the liners do not try to escape or offer resistance." This was, he said, decided upon before the sinking of the *Arabic*, which the German government afterwards (October 5th) disavowed, with expressions of regret and a promise of indemnity for the American lives lost.

Negotiations subsequently took place for the settlement of the case of the *Lusitania*, but they were in-

terrupted by a new controversy as to the position of enemy merchantmen "armed for defense," which the German government, claiming that they were under instructions to act offensively, gave notice would be attacked without warning. In an "informal and confidential letter" sent to the ambassadors of Great Britain, France, Italy, and Russia, and the minister of Belgium, on January 18th, and to the ambassador of Japan on January 24, 1916, Mr. Lansing proposed an arrangement to the effect that merchant-vessels should be prohibited from carrying any armament, while submarines should be required to adhere strictly to the rules of international law in regard to visit and search and the safety of passengers and crews. The letter stated, in conclusion, that the United States was "impressed with the reasonableness of the argument that a merchant-vessel carrying armament of any sort, in view of the character of submarine warfare and the defensive weakness of undersea craft, should be held to be an auxiliary cruiser and so treated by a neutral as well as by a belligerent government," and that the United States was "seriously considering instructing its officials accordingly."

The substance of this letter, the text of which was not officially published till the following August, appeared in the press, without explanation, about the middle of February, 1916. The proposal which it conveyed was formally declined by Great Britain on the 23d of March. Meanwhile, a movement took

place in Congress to pass a resolution warning citizens of the United States against tavelling on armed enemy merchantmen. This movement, which assumed formidable proportions, was publicly opposed by President Wilson. It eventually failed; and a memorandum "prepared during March, 1916," "by direction of the President," on the status of armed merchantmen, was made public by the Department of State, under date of the 25th of that month, as a statement of the government's attitude on the subject. This memorandum, while reasserting the right of neutrals to travel on armed belligerent merchantmen, declared that the determination by a belligerent war-ship of the "war-like character" of such an enemy vessel "must rest in no case upon presumption, but upon conclusive evidence"; that, "in the absence of conclusive evidence," the belligerent must "act on the presumption that an armed merchantman is of peaceful character," even though the armament were such as a neutral government, in performing its neutral duties, might "presume to be intended for aggression." The explanation given of this distinction was that the belligerent war-ship "can on the high seas test by actual experience the purpose of an armament on an enemy merchant-vessel, and so determine by direct evidence the *status* of the vessel."

The entire submarine controversy was brought to a head by the torpedoing by a German submarine, in the English Channel, March 24, 1916, of the

French steamship *Sussex*, an unarmed vessel having on board more than three hundred passengers, about eighty of whom, including some citizens of the United States, were killed or injured. In the course of previous discussions offers of Germany to arbitrate various phases of the controversy had been declined. On a review of the case of the *Sussex* and other cases, the United States, on April 18th, instructed the American ambassador at Berlin to deliver to the German government a note, which was in the nature of an ultimatum. This note, after remarking that it had become "painfully evident" that the position originally taken by the United States was "inevitable," namely, that the use of submarines as commerce destroyers was incompatible with the "principles of humanity," the "rights of neutrals," and the "immunities of non-combatants," declared that, if it was "still the purpose" of the German government to prosecute "relentless and indiscriminate" submarine warfare against "vessels of commerce," the United States was at last forced to the conclusion that there was but one course to pursue; and that, unless that government should "immediately declare and effect an abandonment" of its "present methods" of submarine warfare against both "passenger" and "freight-carrying" vessels, the United States could "have no choice but to sever diplomatic relations with the German Empire altogether."

The German government, answering on May 4th,

stated that orders had been issued to its naval forces that, "in accordance with the general principles of visit and search and destruction of merchant-vessels recognized by international law, such vessels, both within and without the area declared as naval war zone, shall not be sunk without warning and without saving human lives, unless these ships attempt to escape or offer resistance." The note added, however, that neutrals could not expect Germany, forced to fight for her existence, to restrict, in their interest, the use of an effective weapon, if her enemy was "permitted to continue to apply at will methods of warfare violating the rules of international law"; that, the United States having repeatedly declared its determination to restore the principle of the freedom of the seas from whatever quarter it had been violated, the German government did not doubt that the United States would at once "demand and insist" that the British government "forthwith observe the rules of international law universally recognized before the war," as laid down in notes of the United States to that government of December 26, 1914, and November 5, 1915; and that, in case the steps taken by the United States to attain that object should not result in the observance of the laws of humanity by all belligerent nations, "the German government would then be facing a new situation, in which it must reserve itself complete liberty of decision."

Responding, on May 8th, Mr. Lansing said that

the United States, in "accepting" the German government's "declaration of its abandonment" of the policy which had so seriously menaced the good relations between the two countries, would "rely upon a scrupulous execution henceforth of the now altered policy" of that government, and would take it for granted that the latter did "not intend to imply that the maintenance of its newly announced policy" was "in any way contingent upon the course or result of diplomatic negotiations" between the United States and any other belligerent government, although "certain passages" "might appear to be susceptible of that construction"; but that, in order to avoid any possible misunderstanding, the United States must notify the Imperial government that it could "not for a moment entertain, much less discuss, a suggestion that respect by German naval authorities for the rights of citizens of the United States upon the high seas should in any way or in the slightest degree be made contingent upon the conduct of any other government affecting the rights of neutrals and non-combatants."

To this counter notification, or reservation, the German government did not reply.

As has been seen, the German note of May 4, 1916, specified certain notes which the United States addressed to Great Britain on December 26, 1914, and November 5, 1915. In the former, which related to the seizure and detention of vessels laden with American goods destined to neutral ports in Europe,

the United States said it was reluctantly forced to conclude that the policy pursued by the British government in such matters exceeded the manifest necessities of a belligerent and constituted restrictions upon the rights of American citizens on the high seas which were "not justified by the rules of international law or required under the principle of self-preservation," and that, if such things continued, they might "arouse a feeling contrary to that which has so long existed between the American and British peoples." Sir Edward Grey, in reply (January 7, 1915), pointed to the increase of American trade with neutral countries, and stated that the British government were desirous "not to interfere with the normal importation and use by the neutral countries of goods from the United States." The note of November 5, 1915, dealt at great length with the operation of the order in council of the 11th of the preceding March, and, after adverting to the fact that trade was carried on openly by sea between the Scandinavian countries and Germany, declared that the methods sought to be employed to obtain and use evidence of enemy destination of cargoes bound for neutral ports and to impose a contraband character upon such cargoes were "without justification"; that the "blockade," upon which such methods were founded, was "ineffective, illegal, and indefensible";[1]

[1] In the argument of the case of the *Hakan*, before Sir Samuel Evans, President of the English Prize Court, as reported in *Lloyd's List*, June 9, 1916, there occurred between the bench and the bar the following colloquy:

that the judicial procedure offered as a means of reparation for an international injury was inherently defective for the purpose; that in many cases jurisdiction was "asserted in violation of the law of nations"; and that the United States could not submit to "the curtailment of its neutral rights" by measures which, being "admittedly retaliatory, and therefore illegal, in conception and in nature," were "intended to punish the enemies of Great Britain for alleged illegalities on their part."

As to the essential illegality of retaliatory measures, the British government, in its reply (April 24, 1916), took issue with the United States, maintaining that if one belligerent "is allowed to make an attack upon the other regardless of neutral rights, his opponent must be allowed similar latitude in prosecuting the struggle," and that in such case the latter should not be "limited to the adoption of measures precisely identical with those of his opponent." On this point all the belligerents appeared to be in accord.

Discussions also took place between the United States and Great Britain as to other infractions or

"Mr. Balloch was proceeding to refer to the blockade, when—

"The President interrupted to say that what was called a blockade was not a blockade at all, except for journalistic and political purposes.

"Mr. Balloch: I notice that Mr. Balfour yesterday spoke of it as a blockade, so that I am sinning in very good company.

"The President: I do not know what Mr. Balfour said yesterday, but I remember reading a very informing article in which he pointed out that the restrictions we were imposing were very much less onerous than would be the case in an actual blockade."

curtailments of neutral rights or privileges. By the record it appears that the order in council of March 11, 1915, above mentioned, may be regarded as constituting the centre of the system, enforced by various methods, including not only the seizure and detention of vessels and cargoes, but also embargoes, detention and search of mails, the blacklisting of firms in neutral countries, the withholdment of cargo space from non-assenting neutral shippers, and the denial of hospitalities in British ports to non-assenting neutral vessels, for the commercial and financial isolation of the Central Powers, and especially of Germany. Through all these controversies the British government constantly emphasized the distinction between acts affecting "life" and those affecting "property." By the Revenue Act of September 8, 1916, however, the Congress of the United States placed in the hands of the President the power to adopt and enforce countervailing commercial measures. Specifically, when there was reasonable ground to believe that any country was, by "laws, regulations, or practices . . . contrary to the law and practice of nations," restricting the importation of United States products, he was empowered to prohibit or restrict the importation of similar or other products of such country into the United States. He was likewise empowered to detain any vessel, American or foreign, which, "on account of the laws, regulations, or practices of a belligerent," was giving undue or unreasonable pref-

erence or advantage to any person or traffic in the United States, or subjecting any person or traffic in the United States, or American citizens in neutral countries, to any undue or unreasonable discrimination in regard to the reception, delivery, or transportation of freight or passengers. And finally, to any belligerent failing to accord to American ships or citizens the commercial facilities which its vessels and citizens enjoyed in the United States, or equal privileges or facilities of trade with vessels of other nationality than its own, he was empowered to deny similar privileges or facilities.

The German government assured the United States, January 7, 1916, that its submarines in the Mediterranean had from the beginning had "orders to conduct cruiser warfare against enemy merchant-vessels only in accordance with general principles of international law," and in particular to exclude retaliatory measures such as were applicable to the war zone around the British Isles. In the case of the grain-laden American vessel *William P. Frye*, which was sunk, after taking off the crew, by a German auxiliary cruiser, the German government, besides agreeing to make indemnity in accordance with the treaties between the two countries, stated (August 19, 1915) that it had issued orders forbidding American merchantmen carrying conditional contraband to be destroyed, and that, if a vessel carrying absolute contraband were to be destroyed by a submarine, the persons aboard would not be

ordered to the life-boats except where the weather conditions and the nearness of the coast afforded absolute certainty that they would reach the nearest port.

On September 8, 1915, the United States instructed its ambassador at Vienna to inform the government of Austria-Hungary that its ambassador at Washington, Dr. Dumba, was no longer acceptable. This action was based on an intercepted letter addressed by Dr. Dumba to his government, and entrusted by him to a newspaper correspondent for conveyance to Europe, which outlined a plan to instigate strikes in American manufacturing plants engaged in producing munitions of war. The question of the right of neutral individuals to manufacture and sell arms and munitions of war had formed the subject of an extended correspondence between the two governments.[1] The question of the use of submarines was also discussed between them in the case of the Italian steamer *Ancona*, whose sinking, by an Austrian submarine, resulted in the loss of American lives. It was alleged that the steamer attempted to escape; but, as it appeared that she was torpedoed after her engines were stopped and when passengers were still on board, the United States demanded a disavowal of the act, the punish-

[1] As to the law of contraband, see Moore, *Digest of International Law*, VII, 656 *et seq.*; Kleen, *De la Contrebande de Guerra*. Italy, in her notification, Aug. 28, 1916, of a state of war with Germany, seems to have failed to discriminate between "supplies of arms" and "instruments of war, terrestrial and maritime."

ment of the responsible officer, and indemnity for its citizens who were killed or injured. The Imperial and Royal government, while reserving for future discussion "the difficult questions of international law in connection with submarine warfare," substantially assented (December 29, 1915) to the view "that hostile private ships, in so far as they do not flee or offer resistance, may not be destroyed without the persons on board having been placed in safety," and, while stating that the officer at fault had been punished for exceeding his instructions, agreed to pay an indemnity. New demands were made (June 21, 1916) upon the Imperial-Royal government for apology and indemnity for an attack made by an Austrian submarine on the American tank-steamer *Petrolite*, but in this case the discussion drifted towards questions of fact.

On December 12, 1916, the Central Powers suggested the meeting, on neutral ground, of delegates of the warring states, for an exchange of views on the subject of peace. Six days later (December 18) the diplomatic representatives of the United States in all the belligerent countries were instructed to present to the governments to which they were accredited a "suggestion" which it was said that the President had "long had it in mind to offer." This was that the belligerent nations should make such an avowal of their views as to the conclusion of the war and the arrangement of a "guaranty against its renewal or the kindling of any similar conflict in

the future," as would render it possible "frankly to compare them." The objects of statesmen on both sides, as set forth in general terms to their own people and to the world, were, it was observed, "virtually the same," embracing security for the rights of small states, the prevention of "rival leagues to preserve an uncertain balance of power amidst multiplying suspicions," and "the formation of a league of nations to insure peace and justice throughout the world." In the measures to be taken "to secure the future peace of the world" the people and government of the United States were, it was declared, "as vitally and as directly interested" as the governments then at war; and they stood "ready, and even eager," to "coöperate in the accomplishment" of those ends, when the war was over, "with every influence and resource at their command." The President, therefore, it was said, felt "altogether justified in suggesting an immediate opportunity for a comparison of views as to the terms which must precede those ultimate arrangements for the peace of the world"; in other words, an avowal, by the authoritative spokesmen on either side, of the precise objects the attainment of which would bring the war to an end.

To this public invitation the governments addressed publicly responded in variant senses. The Central Powers, December 26, 1916, replied that a direct exchange of views appeared to be the most

suitable way of attaining the desired result, and in this relation referred to their proposal of the 12th of the month.

The Allies, in a joint note of January 10, 1917, after protesting "in the most friendly but in the most specific manner against the assimilation established in the American note between the two groups of belligerents," and denouncing the "aggressive designs" and war practices of the Central Powers, answered that, while the objects of the Allies in the war would not be made known in detail prior to the hour of negotiation, yet the world understood that those objects included "the restoration of Belgium, of Servia, and of Montenegro," with the "indemnities" due them; the "evacuation of the invaded territories of France, of Russia, and of Roumania, with just reparation"; the "reorganization of Europe guaranteed by a stable régime," with respect for nationalities and liberty of economic development; the "restitution of provinces or territories wrested in the past from the Allies by force or against the will of their populations"; the "liberation of Italians, of Slavs, of Roumanians, and of Tcheco-Slovaques from foreign domination"; the "enfranchisement of populations" subject to the Turks, and the "expulsion" of the Ottoman Empire from Europe. While it was intimated that the Allies also wished "to liberate Europe from the brutal covetousness of Prussian militarism," yet the design "to encompass the extermination of the German peoples

and their political disappearance" was specifically disclaimed.

The views thus set forth were supplemented on the part of Great Britain by Mr. Balfour, secretary for foreign affairs, in a dispatch addressed to Sir Cecil Spring Rice, British ambassador at Washington, on January 13, 1917, in which three conditions of a durable peace were declared to be, "that existing causes of international unrest should be, as far as possible, removed or weakened," that "the aggressive aims and the unscrupulous methods of the Central Powers should fall into disrepute among their own peoples," and that "behind international law and behind all treaty arrangements for preventing or limiting hostilities some form of international sanction should be devised which would give pause to the hardiest aggressor." These conditions, said Mr. Balfour, might be "difficult of fulfilment"; but they were believed to be "in general harmony with the President's ideas"; and the Allies were confident that none of them could be satisfied unless a peace could be secured on the lines indicated, so far as concerned Europe, in the joint note.

On January 10, 1917, the day on which the allied note was dated, a new order in council was issued by which the terms "enemy destination" and "enemy origin," as used in the order in council of March 11, 1915, prohibiting all trade and intercourse with Germany, were declared to apply to all goods

"destined for or originating in any enemy country," and the term "enemy property" to goods belonging to "any person domiciled in any enemy country." The new order was expressly made applicable to goods previously discharged at a British or allied port. On January 24th the Foreign Office gave notice that an additional area in the North Sea adjacent to the Dutch and Danish coasts, except territorial waters, would be "rendered dangerous to all shipping by operations against the enemy" and "should therefore be avoided."

On January 22, 1917, President Wilson delivered to the Senate an address in which he undertook to state the "conditions" under which the people of the United States would "feel free" to render to mankind a "service" which, he said, they could "not in honor withhold" and which they did "not wish to withhold"; a "service," he declared, "nothing less than this, to add their authority and their power to the authority and force of other nations to guarantee peace and justice throughout the world." The "conditions," as he detailed them, embraced "a peace without victory," an "equality of rights among organized nations," the acceptance of the principle that "governments derive all their just powers from the consent of the governed" (to be exemplified, for instance, by "a united, independent, and autonomous Poland"), the assurance to "every great people now struggling towards a full development of its resources and its powers" of "a direct outlet to the

great highways of the sea," and the preservation of tne "freedom of the seas."

Copies of this address were transmitted to the representatives of the powers. On January 31, 1917, the German ambassador at Washington, in acknowledging its receipt, stated that, while its "main tendencies" corresponded largely "to the desires and principles professed by Germany," yet, as her enemies had, in their economic conference at Paris, manifested an intention not to treat her as an equal even after peace was restored, and, besides rejecting her recent overture for a discussion of terms of peace, had, on pretence of following the principle of nationality, disclosed their real aim in the war to be "to dismember and dishonor Germany, Austria-Hungary, Turkey, and Bulgaria"; and as Great Britain had for two and a half years been using her naval power in a "criminal attempt to force Germany into submission by starvation," there had been created a "new situation" which forced Germany to "new decisions." These were embodied in two memoranda, which gave notice that, after February 1, 1917, all ships, including those of neutrals, found navigating within a defined zone around Great Britain, France, and Italy, and in the eastern Mediterranean, would be sunk. A limited reservation was made as to neutral ships in or on their way to ports in the "blockaded zones" on the 1st of February; and it was stated that one American passenger-steamer a week, in each direction, might

sail undisturbed to and from Falmouth, in England, such steamers to be distinguished by certain marks and to sail by a designated route, the United States guaranteeing that they carried no articles included in the German contraband list.

A communication of similar tenor and bearing the same date was handed by the Imperial-Royal Foreign Office to the American ambassador at Vienna.

February 3, 1917, Mr. Lansing, referring to the correspondence exchanged in the case of the *Sussex*, announced to the German ambassador, by direction of the President, that all diplomatic relations between the United States and the German Empire were severed.

On the same day the President, in an address to Congress, officially informed that body of the step thus taken. Notwithstanding the unexpected and sudden renunciation by the German authorities of their previous assurance regarding the conduct of submarine warfare, he refused, he said, to believe that they intended to do in fact what they had given warning that they would feel at liberty to do, and only "actual overt acts" on their part could make him believe it. But he added that, if American ships and American lives should in fact be thus sacrificed, he should take the liberty of coming again before Congress for authority to use any means that might be necessary "for the protection of our seamen and our people in the prosecution of their peaceful and legitimate errands on the high seas." He

could, he said, do nothing less; and he took it for granted that "all neutral governments will take the same course."

On February 11th the Swiss minister at Washington, to whom the care of German interests had been committed, presented a memorandum, stating that the German government was "willing to negotiate, formally or informally, with the United States, provided that the commercial blockade against England will not be broken thereby." Mr. Lansing, in the name of the President, replied that the United States would discuss any questions which the German government might propose, but only if the latter would first withdraw its proclamation of January 31st, and renew the assurances given on May 4, 1916, as to submarine warfare.

February 12th the Mexican embassy at Washington presented, by direction of President Carranza, a proposal, to the United States and to "all the other neutral governments," that the warring powers be invited to terminate the conflict either by direct negotiation or through the good offices or friendly mediation of all the countries which should jointly extend the invitation. It was further proposed that if within a reasonable time peace should not by this means be restored, the neutral countries should "take the necessary measures to reduce the conflagration to its narrowest limit by refusing any kind of implements to the belligerents and suspending commercial relations" with them until the con-

flagration should have been "smothered." The United States, in subsequently declining this proposal, referred to the extent to which one group of the belligerents had carried on on the high seas a warfare "involving the destruction of American ships and the lives of American citizens," and to the fact that the United States had "unearthed a plot laid by the government dominating the Central Powers to embroil not only the government and people of Mexico, but also the government and people of Japan in war with the United States." This statement referred to an intercepted dispatch to the German minister in Mexico, by which he was directed, in case the United States should cease to be neutral, to offer Mexico, as the price of her coöperation with Germany, the recovery of the territories which she lost to the United States in the fourth decade of the nineteenth century, and to seek an alliance with Japan.

Meanwhile the general situation at sea had not improved. On January 24, 1917, the British Foreign Office had given notice of a new area in the North Sea, adjacent to the Dutch and Danish coasts, which would be "rendered dangerous to all shipping by operations against the enemy" and which "should therefore be avoided." The reason assigned for this measure was "the unrestricted warfare carried on by Germany at sea by means of mines and submarines." On the 13th of February a new notice was substituted, extending the area; and further en-

largements have since been made by notices of March 21st and April 6th.

Moreover, by a proclamation of February 16th, the British government, referring to the German memorandum as to blockaded zones, announced that, in addition to the restrictions previously imposed on commerce with the enemy, by the order of March 11, 1915, and other measures, the rule would thenceforth be enforced that any vessel sailing to or from a neutral port which afforded means of access to the enemy territory, without calling at a port in British or allied territory, should, until the contrary was established, be deemed to be carrying goods with an enemy destination or of enemy origin, and should be brought in for examination and, if necessary, for adjudication before the prize court. It was further declared that the infraction of this rule would subject the vessel to capture and condemnation; and that goods found to be of "enemy origin" or of "enemy destination" should be liable to the same penalty.

To the intelligent reader these measures will not fail to recall the retaliatory orders and decrees of the wars growing out of the French Revolution and the Napoleonic wars.

On February 14, 1917, the American ambassador at Vienna was instructed to call the attention of the Imperial-Royal government to the sinking in the Mediterranean, presumably by submarines of Austria-Hungary, of a number of vessels having Amer-

icans aboard. Two British vessels particularly were mentioned as having been torpedoed without warning. The instructions recalled the assurance given in the case of the *Ancona*, and, while remarking that this pledge had been modified "to a greater or less extent" not only by the communication of January 31, 1917, but also by a declaration of February 10, 1916, to the effect that "all merchant-vessels armed with cannon, for whatever purpose, by this very fact lose the character of peaceable vessels," asked that the government definitely state its attitude. The answer of the Imperial-Royal government was made on the 2d of March. After discussing at length the questions involved, and declaring the opinion that the arming of merchant-vessels, though only for defence against the exercise of the right of capture, was "not founded on modern international law," the answer stated that Austro-Hungarian men-of-war had instructions "even in case of encountering armed enemy merchant-vessels to be mindful of issuing a warning and of saving the persons on board, if this should be possible under the existing circumstances." That the two British steamers, mentioned by the United States, were sunk by Austro-Hungarian submarines was denied. The answer further stated that while the notice of January 31, 1917, was essentially a warning that no merchant-ship might navigate the sea zones therein defined, yet the Austro-Hungarian men-of-war were "instructed to warn merchant-vessels when possible

even when encountered in these zones as well as to provide for the safety of crews and passengers." The Imperial-Royal government, said the answer, was "unable to accept a responsibility for the possible loss of human life which, nevertheless, may result from the destruction of armed ships or ships encountered in the closed zones"; but attention was called to the circumstance that Austro-Hungarian submarines were "operating only in the Adriatic and in the Mediterranean," so that prejudice to American interests by their operations was "hardly to be feared." In conclusion, the note explicitly declared that the assurance given in the case of the *Ancona* and renewed in that of the *Persia* had "neither been withdrawn nor restricted" by the declarations of February 10, 1916, and January 31, 1917.

On February 26th, the term of the existing Congress being then about to expire, the President again addressed that body. He stated that the commerce of other neutral nations was, in common with that of the United States, "suffering severely," but perhaps not very much more severely than before. "We have," said the President, "asked the cooperation of the other neutral governments to prevent these depredations, but so far none of them has thought it wise to join us in any common course of action." The President further stated that, although two American vessels had been sunk, the circumstances did not clearly indicate an altered method in the German submarine warfare, and that the sit-

uation since the 3d of February had not substantially changed, except for the tying up of American shipping in port because of the unwillingness of shipowners to risk their vessels at sea without insurance or adequate protection, and the resulting congestion of commerce which was growing rapidly more and more serious every day. This might in itself, he remarked, in effect accomplish what the new German submarine order was meant to accomplish, but he could only say that the "overt act" which he had ventured to hope the German commanders would avoid had not occurred. But there had, he said, been certain additional indications and expressions of purpose on the part of the German press and the German authorities which increased the impression that the course of the German submarine commanders had been characterized by an unexpected discretion and restraint rather than by any restriction placed upon them by their instructions. The situation, therefore, was fraught with the gravest possibilities and dangers, and as the session of Congress was about to expire, he desired to obtain "full and immediate assurance" of the authority which he might at any moment need to exercise. The form in which action might become necessary could not be foreseen, but he asked to be authorized to supply American merchant-ships with defensive arms, should that become necessary, and with the means of using them, and to employ "any other instrumentalities or methods that may be necessary and adequate to pro-

tect our ships and our people in their legitimate and peaceful pursuits on the seas." Along with these powers, he asked for a sufficient credit to provide adequate means of protection, including insurance against present war risks.

The term of the Congress having come to a close without legislative action on this request, the Department of State on the 12th of March informed the members of the Diplomatic Corps in Washington that, as the Imperial German government had on January 31, 1917, announced that all ships, neutral included, encountered "within certain zones of the high seas, would be sunk without any precautions being taken for the safety of the persons on board, and without the exercise of visit and search," the government of the United States had "determined to place upon all American merchant-vessels sailing through the barred areas an armed guard for the protection of the vessels and the lives of the persons on board."

"Overt acts" having occurred, the President, on the 2d of April, again addressed Congress, which he had called in extra session. Vessels of every kind without regard to flag, character, cargo, destination, or errand had, he said, been ruthlessly sent to the bottom without warning and without thought of help or mercy for those on board; the vessels of friendly neutrals along with those of belligerents, and even hospital ships and ships carrying relief to Belgium, though provided with safe conduct, had been sunk. The present German submarine war-

fare against commerce was, he declared, "a warfare against mankind," "a war against all nations"—the "challenge" was "to all mankind." Each nation must decide for itself how it would meet the challenge. There was, he said, but "one choice" that could be made; and he advised that the Congress declare the recent course of the Imperial German government "to be in fact nothing less than war against the government and people of the United States," and that immediate steps be taken "not only to put the country in a more thorough state of defence, but also to exert all its power and employ all its resources to bring the government of the German Empire to terms and end the war." This would, he said, "involve the utmost practicable co-operation and action with the governments now at war with Germany, and, as incident to that, the extension" to them "of the most liberal financial credits, in order that our resources" might, "so far as possible, be added to theirs." It would "involve the organization and mobilization of all the material resources of the country," the "immediate full equipment of the navy," and the immediate addition to the armed forces of the United States of at least five hundred thousand men, to "be chosen upon the principle of universal liability to service." The object of the United States should be "to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of

the world such a concert of purpose and of action" as would "henceforth ensure the observance of those principles." The United States was, President Wilson further declared, "at the beginning of an age" in which it would be "insisted that the same standards of conduct and of responsibility for wrong done" should "be observed among nations and their governments" that were "observed among the individual citizens of civilized states." A steadfast concert for peace could never be maintained except by "a partnership of democratic nations." Events had shown that "the Prussian autocracy was not and could never be our friend"; that it had meant to stir up enemies against the United States at its very doors was shown by the intercepted note to the German minister at the City of Mexico. The United States, the President affirmed, was about to accept the gage of battle with this "natural foe to liberty" and should, if necessary, "spend the whole force of the nation to check and nullify its pretensions and its power." "The world," said the President, "must be made safe for democracy." The United States had no "selfish ends to serve," no desire for "conquest" or for "dominion," but was the champion of the "rights of mankind."

On April 6, 1917, the President approved a joint resolution of Congress, announcing that the "state of war between the United States and the Imperial German government" which had been "thrust upon the United States" was "formally declared."

Two days later (April 8th) the *chargé d'affaires* of the United States at Vienna was notified that, as the United States had declared the existence of a state of war with the Imperial German government, Austria-Hungary, as the ally of the German Empire, had decided to break off diplomatic relations with his government. At the same time passports were placed at his disposal for the departure of himself and the other members of the embassy. The ambassador of the United States, Mr. Penfield, had previously withdrawn from the Austrian capital.

Within a few days after President Wilson's war message to Congress the government of Brazil severed diplomatic relations with Germany because of the torpedoing of the Brazilian steamer *Paraná* off Cherbourg. When, subsequently, the Brazilian vessel *Tijuca* also was torpedoed the decree of neutrality not long previously issued respecting the war between the United States and Germany was revoked, and an American squadron, then on its way to South America, was thus relieved in advance from the observance of neutral restrictions in Brazilian waters. The decree of neutrality as between the Allies in Europe and Germany was not then withdrawn, but German merchantmen lying in Brazilian ports were placed under the Brazilian flag and incorporated into the national merchant marine. While the contrast between Brazil's attitude towards the Allies in Europe and her attitude towards the United States exemplified anew the traditional friendship and sympathy

between the two American countries, of which there have been in the course of years so many striking manifestations,[1] yet it is also true that Brazil had, in

[1] In notifying the United States of his government's revocation of the decree of neutrality, the Brazilian Ambassador at Washington, June 4, 1917, wrote as follows:

"MR SECRETARY OF STATE,—The President of the Republic has just instructed me to inform your Excellency's Government that he has approved the law which revokes Brazil's neutrality in the war between the United States of America and the German Empire. The Republic thus recognized the fact that one of the belligerents is a constituent portion of the American continent and that we are bound to that belligerent by traditional friendship and the same sentiment in the defense of the vital interest of America and the accepted principles of law.

"Brazil ever was and is now free from war-like ambitions, and while it always refrained from showing any partiality in the European conflict, it could no longer stand unconcerned when the struggle involved the United States, actuated by no interest whatever but solely for the sake of international judicial order, and when Germany included us and the other neutral powers in the most violent acts of war.

"While the comparative lack of reciprocity on the part of the American republics divested until now the Monroe Doctrine of its true character, by permitting of an interpretation based on the prerogatives of their sovereignty, the present events which brought Brazil even now to the side of the United States at a critical moment in the history of the world, are still imparting to our foreign policy a practical shape of continental solidarity, a policy, however, that was also that of the former régime whenever any of the other sister friendly nations of the American continent was concerned. The Republic strictly observed our political and diplomatic traditions and remained true to the liberal principles in which the nation was nurtured.

"Thus understanding our duty and Brazil taking the position to which its antecedents and the conscience of a free people pointed, whatever fate the morrow may have in store for us, we shall conserve the Constitution which governs us and which has not yet been surpassed in the guaranties due to the rights, lives, and property of foreigners.

"In bringing the above-stated resolution to your Excellency's

common with other South American countries, felt the effects of various restrictive measures of the European Allies, such as the blacklist and embargoes. As regards the latter, it may be observed that the British list of prohibited articles contains certain Brazilian agricultural exports, including the great national product—coffee. While this prohibition is maintained for the purpose of assuring the use of all cargo space for foodstuffs of prime necessity, such measures are of necessity more or less judged in each country by their local effects. On June 28, 1917, however, the President of Brazil issued a decree revoking the prior neutrality decrees as between Germany, on the one hand, and Russia, France, Belgium, Great Britain Japan, and Portugal, on the other.

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Bancroft's (Frederic) *Life of Seward;*

knowledge, I beg you to be pleased to convey to your Government the sentiments of unalterable friendship of the Brazilian people and Government.

"I avail myself of the opportunity to reiterate to your Excellency the assurances of my highest consideration.

"DOMICIO DA GAMA."

—*Official Bulletin*, Washington, June 22, 1917.

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III

FREEDOM OF THE SEAS

In maintaining the right of neutrals freely to navigate the ocean in pursuit of innocent commerce, the early statesmen of America, while sustaining a predominant national interest, gave their support to a cause from the eventual triumph of which the whole world was to derive an incalculable benefit. But it was not in time of war alone that commerce was exposed to attacks at sea. Although the exorbitant pretensions of the sixteenth century, by which the navigation even of the Atlantic and the Pacific was assumed to be susceptible of engrossment, had, before the end of the eighteenth, fallen into desuetude, much remained to be accomplished before the exhibition of an acknowledged national flag would assure to the peaceful mariner an unmolested passage. Ere this great end could be attained, it was necessary that various exaggerated claims of dominion over adjacent seas should be denied and overcome, that the "right of search" should be resisted and abandoned, and that piracy should be extirpated.

In placing the danger from "water thieves" before the peril of "waters, winds, and rocks," Shylock described a condition of things that long survived his own times. At the close of the eighteenth century, a merchantman built for long voyages still differed little in armament from a man-of-war. Whether it rounded the Horn or the Cape of Good Hope, it was exposed to the depredations of ferocious and well-armed marauders, and if it passed through the Straits of Gibraltar it was forced to encounter maritime blackmail in its most systematic and most authoritative form. On the African coast of the Mediterranean lay the Barbary powers—the empire of Morocco, and the regencies of Tunis, Tripoli, and Algiers—which had for generations subsisted by depredations on commerce. In this way they had won the opprobrious title of "piratical states," but they wore it with a pampered and supercilious dignity. Even in the exchange of courtesies they exhibited a haughty parsimony, exacting from the foreign man-of-war the generous requital of a barrel of powder for every gun with which they returned its salute. They had every reason to know that their power was understood and dreaded. In their navies might be found the products of the ship-building skill of England, France, Spain, and Venice. In war, civilized powers did not always scruple to make use of their aid. Their mode of life was diplomatically recognized, and to some ex-

tent connived at. It was regulated by a simple formula. While disdaining the part of common pirates, such as plundered vessels indiscriminately, they professed themselves at war with all who refused to pay them tribute; and they took good care to make their friendship expensive. Peace with Algiers, in 1786, was reported to have cost Spain upward of three millions of dollars, while the annual presents of Great Britain to the four states were valued at nearly three hundred thousand.

At the outbreak of the Revolution it was estimated that one-sixth of the wheat and flour exported from the United States, and one-fourth of their dried and pickled fish, and a quantity of rice, found their best market in the ports of the Mediterranean. In this commerce, which had grown up under the protection of the British flag, there were employed from eighty to a hundred ships, manned by twelve hundred seamen. Early in the war it was entirely abandoned, and its loss was severely felt. In the plan of a treaty furnished to Franklin and his colleagues, the Continental Congress, accommodating its demands to its wishes, proposed that France should take the place of Great Britain as the protector of American vessels; but the King of France went no further than to agree to lend his good offices. During the Revolution the Mediterranean commerce therefore remained in abeyance; but on May 12, 1784, Adams, Franklin, and Jefferson were

commissioned to treat with the Barbary powers; and on the 11th of the ensuing March they were authorized to send agents to those countries to negotiate. The government acted none too soon. Before an agent was appointed to Morocco, an American vessel was captured by a cruiser of that state. The Emperor, however, exhibited much mildness. On the friendly interposition of Spain, he restored the vessel and cargo and released the crew; and in January, 1787, he concluded a liberal treaty, at a cost to the United States of less than ten thousand dollars.

The other powers proved to be less tractable, and especially troublesome was the Dey of Algiers, by whose activities the revival of American commerce with the Mediterranean was for a time effectually prevented. On July 25, 1785, the schooner *Maria*, of Boston, was captured off Cape St. Vincent by an Algerine cruiser, and five days later the ship *Dauphin*, of Philadelphia, was taken. The vessels and their cargoes were carried to Algiers, and all on board, embracing twenty-one persons, were, according to custom, consigned to slavery till they should be ransomed. A new difficulty was thus created. When Congress issued its commission to Adams and his associates, there were thousands of captives in Barbary; but, as there were no Americans among them, the question of ransom was not considered, and the whole expense of the negotiations was

limited to eighty thousand dollars. For the libera-
tion of the twenty-one Americans subsequently
captured, Algiers demanded two-thirds of that
sum. For this emergency no provision had been
made. When the new government under the Con-
stitution was formed, Jefferson, as Secretary of
State, declared the determination of the United
States "to prefer war, in all cases, to tribute under
any form," but a navy was wanting to make
this declaration effective. By December, 1793,
the number of American vessels captured by Al-
gerine corsairs had risen to thirteen, and the num-
ber of captives to a hundred and nineteen. From
Boston to Norfolk almost every seaport had fur-
nished its victim. Nor was the Dey anxious to
make peace with America. So successful had he
been in bringing other governments to terms, that
he remained at war only with the United States and
the Hanse Towns, and he began to grow apprehen-
sive at the prospect of inactivity. "If," he ex-
claimed, "I were to make peace with everybody,
what should I do with my corsairs? What should
I do with my soldiers? They would take off my
head for the want of other prizes, not being able to
live upon their miserable allowance." Reasoning
thus, he was not disposed to compromise; but the
government of the United States, urged on by the
cry of the captives, whom it was then unable to
rescue by force, accepted his conditions, and, by

the expenditure of nearly eight hundred thousand dollars, obtained the release of its citizens and purchased a peace, which was signed on September 5, 1795. A treaty with Tripoli followed on November 4, 1796, and with Tunis in August, 1797.

The respite thus secured was of brief duration. The Dey of Algiers received, under his treaty with the United States, an annual payment of twelve thousand sequins (equivalent to nearly twenty-two thousand dollars) in naval stores, but, besides this stipulated tribute, there were customary payments that were rigorously counted as regalian rights. Among these were included a present of twenty thousand dollars on the sending out of a new consul, biennial presents to officers of government estimated at seventeen thousand dollars, and incidental and contingent presents of which no forecast could be made. Tribute was likewise paid to Tripoli and to Tunis; but the potentates of the regencies, though they pursued a common interest, were jealous of one another's prosperity in peace as well as in war, and were hard to content. Early in 1800 the Bashaw of Tripoli, Jusuf Caramanly, a bold usurper who seems to have understood both the principles and the cant of thrifty politics, complained to Mr. Cathcart, the American consul, that the presents of the United States to Algiers and Tunis were more liberal than those to himself; and he significantly added that compliments, although acceptable, were of lit-

tle account, and that the heads of the Barbary states knew their friends by the value of the presents they received from them. Not long afterwards he intimated that he would like to have some American captives to teach him English, and that, if the United States flag once came down, it would take a great deal of "grease" to raise it again. Finally, lest the seriousness of his grievances might not be appreciated, he addressed himself directly to the President, to whom he pointedly declared that any delay in complying with his demands would be prejudicial to American interests. No response came, and the Bashaw grew impatient. "In Tripoli, consul," said he, to Cathcart, "we are all hungry, and if we are not provided for we soon get sick and peevish." Cathcart, seeing that the Bashaw spoke in metaphors, replied that, when the chief physician prescribed the medicine, he should not object to administering it, but that meanwhile he could promise nothing. "Take care," answered the Bashaw, "that the medicine does not come too late, and, if it comes in time, that it is strong enough." On May 14, 1801, he caused the American flag-staff to be chopped down six feet from the ground, in token of war. The answer of the United States had already been decided upon. Symptoms of unrest had appeared in Tunis and Algiers as well as in Tripoli; and a squadron was sent to the Mediterranean with orders, if any of the Barbary powers should declare

war or commit hostilities, to protect American commerce and chastise their insolence. The government had, as President Jefferson declared, determined "to owe to our own energies, and not to dishonorable condescensions, the protection of our right to navigate the ocean freely." For two years the contest with Tripoli dragged wearily along, but its vigorous prosecution with augmented forces, after the summer of 1803, brought it at length to a triumphant close. The midnight destruction by Decatur of the frigate *Philadelphia*, under the fire of the Bashaw's gunboats and batteries; the fierce and incessant bombardments by Preble of the Tripolitan stronghold; the mysterious fate of the heroic Somers and his fire-ship; and the intrepid march of Eaton across the desert to the capture of Derne, were incidents which taught the rulers of the Barbary coast that a new spirit must be reckoned with. On June 3, 1805, peace was agreed to by a representative of the Bashaw on board the frigate *Constitution*, and next day a treaty was concluded on shore.

During the seven years that followed the second peace with Tripoli, the relations of the United States with the Barbary powers were comparatively uneventful; but their tranquillity was now and then disturbed by incidents which, although they did not produce a rupture, bespoke a sullen dissatisfaction with existing conditions. This feeling prompt-

ly flamed out when in 1812 the report was received of war between the United States and Great Britain. The Dey of Algiers, encouraged to believe that the maritime power of America would be annihilated, discovered that the United States had always fallen short in the payment of tribute, and expelled the American consul-general and all American citizens from his dominions. An American brig was captured by an Algerine corsair, and the crew reduced to captivity, while an American passenger was taken out of a Spanish ship and held in bondage. Tripoli and Tunis allowed the prizes of an American privateer to be recaptured by the British in their ports. As the war with England had practically shut the Mediterranean against American vessels, measures of defence were deferred; but on February 23, 1815, five days after peace with Great Britain was proclaimed, President Madison recommended a declaration of war against Algiers. The response of Congress was at once made in an act, approved on March 3d, "for the protection of the commerce of the United States against the Algerine cruisers." Two squadrons were ordered to the Mediterranean, under Bainbridge and Decatur. Decatur, arriving first on the scene, compelled the Dey on June 30th to agree to a treaty by which it was declared that no tribute, under any name or form whatsoever, should again be required from the United States. No other nation had ever obtained such terms.

Tripoli and Tunis were also duly admonished; and the passage of the Straits of Gibraltar was relieved of its burdens and its terrors.

With the suppression of the Barbary exactions, tolerated piracy disappeared; but the depredations of lawless freebooters in various parts of the world long continued to furnish occasion for naval and to some extent for diplomatic activity. As late as 1870 the naval forces of the United States were directed, upon the invitation of Prussia, to co-operate with those of the other powers for the suppression of piracy in Chinese waters. Such incidents, however, possess no special significance. No one undertakes to defend confessed lawlessness. Attempts to abridge the freedom of the seas assume a dangerous form, and become important when they are made or sanctioned by governments, on pleas of pretended right or interest. Within this category fell the claim long strenuously asserted that the cruisers of one nation might lawfully visit and search the merchant vessels of another nation on the high seas, in peace as well as in war. To the people of the United States this claim was rendered especially hateful by the practice of impressment, with which it came to be peculiarly identified. From time immemorial the commanders of men-of-war had been in the habit, when searching neutral vessels for contraband or enemy's property, of taking out and pressing into service any seamen whom

they conceived to be their fellow-subjects. The practice was essentially irregular, arbitrary, and oppressive, but its most mischievous possibilities were yet to be developed in the conditions resulting from American independence. After Great Britain, in 1793, became involved in the wars growing out of the French Revolution, the nature and extent of those possibilities were soon disclosed. Not only were the native sailors of England and America generally indistinguishable by the obvious test of language, but the crews of American vessels often contained a large proportion of men of British birth, who, even when naturalized in the United States, were, under the doctrine of indelible allegiance then almost universally prevalent, still claimed by Great Britain as her subjects. Native Americans, if mistakenly impressed, ran the risk of being killed in action before an order could be obtained for their release; all others were firmly held to service. Nor was it a slight inconvenience that in this way American crews were sometimes so far depleted as to be unable to navigate their ships. The United States, while freely admitting the belligerent right of search, denied that it might be employed for any but the acknowledged purposes of enforcing blockades, seizing prize goods, and perhaps capturing officers and soldiers in the actual service of the enemy. "The simplest rule," declared Jefferson, when Secretary of State, "will be that the vessel being Amer-

ican shall be evidence that the seamen on board are such." Efforts were repeatedly made by the United States to adjust the controversy, but in vain. President Madison gave it the chief place in his message of June 1, 1812, recommending war against Great Britain; but in the treaty of peace concluded at Ghent, December 24, 1814, it was not mentioned. Nearly thirty years later, Webster, when Secretary of State, recurring to Jefferson's rule, declared: "In every regularly documented American merchant-vessel the crew who navigate it will find their protection in the flag which is over them." These words were addressed to Lord Ashburton on August 8, 1842. The principle of protection and immunity which they announced was asserted in even broader terms, and was thus impliedly accepted by the British government in 1861. On November 8th in that year the British mail-steamer *Trent*, while on a voyage from Havana to St. Thomas, was overhauled by the American man-of-war *San Jacinto*, Captain Wilkes, and was compelled to surrender the Confederate commissioners Messrs. Mason and Slidell, and their secretaries, Messrs. McFarland and Eustis, all of whom were on their way to England. The sole reason given by Earl Russell for demanding their release was that "certain individuals" had "been forcibly taken from on board a British vessel, the ship of a neutral power, while such vessel was pursuing a lawful and innocent voyage—an

act of violence which was an affront to the British flag and a violation of international law." No wonder that Mr. Seward, in assuring Lord Lyons that the demand would be granted, congratulated himself on defending and maintaining "an old, honored, and cherished American cause."

The controversy as to impressment involved no question as to search on the high seas in time of peace. Such a right had been asserted by Spain and other powers for the purpose of enforcing their colonial restrictions. The United States refused to admit it, and conceded a right of search in time of peace only in respect of pirates, who, as enemies of the human race, were held to be outside the pale of national protection. Beyond this the government refused to go. As the war-right of search had been perverted to the purpose of impressment, so it was apprehended that the peace-right, if any were admitted to exist, might be perverted to the same purpose or to purposes equally odious.

To this position the United States tenaciously adhered, even when strongly solicited to depart from it by the promptings of philanthropy. The movement so energetically led by Great Britain during the first half of the nineteenth century, for the suppression of the African slave-trade, found in all civilized lands strong support in public opinion. To its success, however, the voluntary co-operation of nations was discovered to be indispensable. Soon

after the close of the Napoleonic wars, Lord Stowell, the greatest judge that ever sat in the English Court of Admiralty, declared in the case of a French vessel, which had been seized by a British cruiser on a charge of engaging in the slave-trade, that no nation could exercise a right of visitation and search upon the common and unappropriated part of the ocean except from belligerent claim. The vessel was discharged. As if to anticipate such an obstacle, the British government had already entered into treaties with Denmark, Portugal, and Spain, by which a qualified right of search was conceded; and it sought to make the measure universal. So steadfastly was the object pursued that by 1850 the number of such treaties in force between Great Britain and other powers was twenty-four. Among the assenting governments, however, the two most important powers were not found — the United States and France. When the proposal was submitted to the United States, the government at once repulsed it. No man condemned the slave-trade more strongly than did John Quincy Adams; on the other hand, no one more profoundly appreciated the fundamental principles of American policy and the importance of maintaining them. In 1818, when Secretary of State, he declared that the admission of the right of search in time of peace, under any circumstances whatever, would meet with universal repugnance in the United States. He steadily re-

sisted in Monroe's cabinet, even in opposition to the yielding inclinations of Calhoun and other members from slave States, any abatement of this position. The subject was, however, taken up in Congress, and by an act of May 15, 1820, the slave-trade was branded as piracy. This act seemed to constitute the first step on the part of the United States towards the assimilation of the traffic, by the consent of the civilized world, to piracy by law of nations, thus bringing it within the operation of the only acknowledged right of search in time of peace; and by a resolution of the House of Representatives, passed on February 28, 1823, by a vote of 131 to 9, the President was requested to open negotiations to that end. Instructions in conformity with this resolution were given to the diplomatic representatives of the United States; and on March 13, 1824, a convention was signed at London which conceded a reciprocal right of search on the coasts of Africa, America, and the West Indies. The Senate of the United States, however, on May 21, 1824, by a vote of 36 to 2, struck out the word "America," and, the British government declining to accept the amendment, the treaty failed. On December 10, 1824, the Senate rejected a similar convention with Colombia, although it did not apply to the American coasts. Negotiations on the subject were therefore discontinued, and the decision not to concede even a qualified right of search was adhered to.

The government of the United States was not insensible to the crying evils of the traffic in slaves. In the treaty of Ghent, it had concurred in reprobating the traffic as "irreconcilable with the principles of humanity and justice," and had pledged its best endeavors to accomplish its entire abolition. But, while always acknowledging, as it did in the Webster-Asburton treaty, the duty to employ its naval forces for the redemption of that pledge, it insisted that American vessels on the high seas should be liable to search only by American cruisers; and it conceded a similar exemption to the vessels of other nations. In 1858 this principle was at length formally accepted by the British government; and in the same year the Senate of the United States unanimously reaffirmed it. Since that time, the United States has in three instances consented to a qualified departure from its observance: in the treaties with Great Britain, concluded April 7, 1862, and February 17, 1863, during the civil war, admitting a reciprocal search for slavers within two hundred miles from the African coast southward of the thirty-second parallel of north latitude, and within thirty leagues of the islands of Cuba, Puerto Rico, Santo Domingo, and Madagascar; in the general act of Brussels of July 2, 1890, permitting, for the purpose of repressing the slave-trade, a mutual search within a defined zone on the eastern coast of Africa of vessels of less than five hundred tons bur-

den; and in the agreements for the protection of the fur seals in Bering Sea. By the abolition of slavery in the Spanish Antilles, the most doubtful concession made in the treaties with Great Britain soon ceased practically to cause anxiety; nor was the integrity of the general principle impaired by the exceptional and temporary relaxation of its observance by mutual agreement. It may indeed be said that the making of such agreements by the United States was rendered possible by the previous unqualified acceptance of the principle of the freedom of the seas by Great Britain and other maritime powers.

The disposition of the United States to maintain its general and time-honored rule was signally exemplified in the case of the steamer *Virginius*. On October 31, 1873, the *Virginius*, while sailing under an American register and flying the American flag, was chased and seized on the high seas off the coast of Cuba by the Spanish man-of-war *Tornado*. The captive vessel was taken to Santiago de Cuba, where, after a summary trial by court-martial, ostensibly on a charge of piracy, fifty-three of her officers, crew, and passengers, embracing Americans, British subjects, and Cubans, were condemned and shot. The rest were held as prisoners. No foundation was shown for the charge of piracy beyond the fact that the vessel was employed by Cuban insurgents in conveying arms, ammunition, and men to

Cuba, an employment which obviously did not constitute piracy by law of nations. The government of the United States therefore demanded the restoration of the vessel, the surrender of the captives, a salute to the American flag, and the condign punishment of the Spanish officials. On proof that the register of the *Virginius* was fraudulent, and that she had no right to American colors, the salute to the flag was afterwards dispensed with; but the vessel and the survivors of her passengers and crew were duly delivered up; and an indemnity was eventually obtained by the United States for the relief of the sufferers and of the families of those who were put to death, with the exception of the British subjects, for whom compensation was obtained from Spain by their own government. It is often stated that the United States in this case maintained that the *Virginius* was exempt from search merely because she bore the American flag, even though her papers were false and she had no right to fly it. This supposition is contradicted by the fact that the salute to the flag was dispensed with. The demands of the United States in their last analysis rested chiefly upon the ground that the vessel was unlawfully seized on a spurious charge of piracy, and that the proceedings at Santiago de Cuba were conducted in flagrant disregard of law and of the treaties between the two countries. In March, 1895, the American steamer, *Allança*, bound

from Colon to New York, was fired on by a Spanish gunboat off the coast of Cuba outside the three-mile limit. The Spanish government promptly disavowed the act and expressed regret, and, by way of assurance that such an event would not again occur, relieved the offending officer of his command. Incidents such as these serve to show that the principle of the freedom of the seas has lost neither its vitality nor its importance. It may indeed be said that the exemption of vessels from visitation and search on the high seas in time of peace is a principle which rather grows than diminishes in the estimation of mankind; for in the light of history, its establishment is seen to mark the progress of commerce from a semi-barbarous condition, in which it was exposed to constant violence, to its present state of freedom and security. Nor is there any page in American diplomacy more glorious than that on which the successful advocacy of this great principle is recorded.

While maintaining the freedom of the seas, the United States has also contended for the free navigation of the natural channels by which they are connected. On this principle, it led in the movement that brought about the abolition, in 1857, of the dues levied by Denmark on vessels and cargoes passing through the sound and belts which form a passage from the North Sea into the Baltic. These dues, which were justified by the Danish govern-

ment on the ground of immemorial usage, sanctioned by a long succession of treaties, and of the benefit conferred on shipping by the policing and lighting of the waters, bore heavily on commerce, and the United States, after repeatedly remonstrating, at length gave notice that it would no longer submit to them. This action led to the calling of a conference in Europe. The United States declined to take part in it, but afterwards co-operated, by a treaty with Denmark, in giving effect to the plan under which the dues were capitalized and removed.

An artificial channel necessarily involves special consideration; but, reasoning by analogy, Mr. Clay, as Secretary of State, declared that if a canal to unite the Pacific and Atlantic oceans should ever be constructed, "the benefits of it ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation or reasonable tolls." This principle was approved by the Senate in 1835, and by the House of Representatives in 1839, and was incorporated in the treaty which was concluded at Washington, April 19, 1850, by John M. Clayton, Secretary of State, on the part of the United States, and by Sir Henry Lytton Bulwer, British minister at Washington, on the part of Great Britain. Although the ratifications of this treaty were promptly exchanged (July 4, 1850), probably no other diplomatic document to which the

United States was a party has given rise to discussions at once so complicated and so prolonged.

The immediate object of the Clayton-Bulwer treaty, as stated in the preamble, was the "setting forth and fixing" of the "views and intentions" of the two governments with reference to a ship canal between the Atlantic and the Pacific by what is known as the Nicaragua route. The construction of such a canal by a private company, chartered by the governments through whose territories the route lay, seemed then to be near accomplishment. By the unauthorized convention concluded by Elijah Hise with Nicaragua on June 21, 1849, Nicaragua undertook to grant to the United States the "exclusive right and privilege" to build an interoceanic way through Nicaraguan territory; and it was stipulated (Article III) that if the United States should not do the work, either the President or the Congress should issue a charter to some one for the purpose. The treaty was not submitted to the United States Senate; and in the debates in that body, in March, 1853, on questions growing out of the Clayton-Bulwer treaty, Mr. Clayton, who had then returned to the Senate, found no one to controvert his assertion that the government of the United States had no constitutional power to construct a way in foreign jurisdiction or to charter a company for that purpose.

The Clayton-Bulwer treaty was based upon the principle of neutralization. While binding the con-

tracting parties to protect the canal from "interruption, seizure, or unjust confiscation," it also pledged them to "guarantee" its "neutrality," so that it might "forever be open and free," and, for the full attainment of this object, to invite other powers to enter into similar stipulations with them, "to the end that all other states may share in the honor and advantage of having contributed to a work of such general interest and importance." But the treaty went further. It declared (Article VIII) that the contracting parties, in entering into it, had desired not only to accomplish a "particular object," but also to "establish a general principle," and that they therefore agreed "to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway," across the isthmus connecting North and South America, and especially to the communications then projected by way of Tehuantepec or Panama; it being understood, as a condition of such joint protection, that the "charges or conditions of traffic" should be "just and equitable" to the citizens of every state willing to participate in such protection. In reality, the railway across the Isthmus of Panama was then under construction by American capitalists, and steps had already been taken by the United States and New Granada (afterwards Colombia) towards its neutralization, the treaty of 1846 (Article XXXV) having assured to the United States the "free and open" transit across the isthmus by any

mode of communication then or thereafter existing, while the United States, as "an especial compensation," guaranteed to New Granada, "positively and efficaciously," the "perfect neutrality" of the isthmus and her "rights of sovereignty and property" over that territory.

After the Civil War in the United States the tone of public utterances changed. A demand sprang up for a canal under American control. This demand gained in strength after Great Britain's acquisition of virtual control of the Suez Canal and still more after her occupation of Egypt. Eventually the United States took steps to build the canal by its own means. But the stipulations of the Clayton-Bulwer treaty seemed to stand in the way, and particularly, so far as concerned the Nicaragua route, the stipulation that neither contracting party would "ever obtain or maintain for itself any exclusive control" over the canal in that quarter, or erect or maintain any fortifications commanding or near it, "or occupy, or fortify, or colonize, or assume, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America."

On February 5, 1900, there was signed at Washington by Mr. Hay, Secretary of State, and Lord Pauncefote, British ambassador, a convention, the object of which was declared to be to remove any objection to the construction of the canal under the auspices of the government of the United States, without impairing the "'general principle' of neu-

tralization" established by Article VIII of the Clayton-Bulwer treaty. It was therefore agreed that that treaty should be considered as superseded, and that certain rules, substantially the same as those found in the convention of Constantinople of October 29, 1888, relating to the Suez Canal, should be adopted as the basis of "neutralization." The Senate amended the treaty in several essential points, including (1) the elimination of a clause by which the contracting parties agreed to invite the adhesion of other powers, and (2) the insertion of a proviso that the rules should not apply to measures which the United States might "find it necessary to take for securing by its own forces the defence of the United States and the maintenance of public order."

In making these amendments the Senate no doubt was influenced by the consideration that, as stated by Mr. Curzon, British Under Secretary of State for Foreign Affairs, in the House of Commons, July 22, 1898, the convention of Constantinople had never "been brought into practical operation." The amendments gave rise to further negotiations, which resulted in the signing at Washington, November 18, 1901, of the second Hay-Pauncefote treaty. This arrangement was duly ratified. It did not inhibit the fortification of the canal by the United States, but provided that "no change of territorial sovereignty or of the international relations of the country or countries traversed" by the canal should affect the "general principle of neutralization or the

obligations of the high contracting parties" under the "present treaty."

Coincidently with the removal of obstacles to the building and control of the canal by the United States, the Nicaragua was abandoned for the Panama route, and a treaty for a right of way was soon signed with Colombia as sovereign of the isthmus. The Colombian Congress, affirming that the terms of the treaty as concluded infringed the national sovereignty and were contrary to the national constitution and laws, declined to ratify it. Panama then declared its independence, which was promptly recognized and supported by the United States, and on February 18, 1903, entered into a treaty granting to the latter in perpetuity a zone ten miles wide and certain adjacent islands for the purposes of a canal. Colombia vigorously protested, invoking particularly Article XXXV of the treaty of 1846, and a controversy ensued which is not yet ended. A treaty signed at Bogotá on April 6, 1914, providing for the payment to Colombia of the sum of $25,000,000, with other compensations, has not as yet passed the United States Senate, where objection is understood to have been made both to the amount of money to be paid and also to a clause expressing, in the name of the government and people of the United States, "sincere regret that anything should have occurred to interrupt or to mar the relations of cordial friendship that had so long subsisted between the two nations."

Meanwhile the canal, begun years ago by the French, has been completed and opened to traffic. It has also been fortified. Its "neutralization" must be admitted to be only nominal. It would indeed be more nearly accurate to say that the term, as applied to existing conditions, is merely a reminiscent misnomer. As against the United States, as sole owner and protector, the present stipulations have no substantial effect beyond assuring the commercial use of the canal on terms of substantial equality.

The Congress of the United States, in legislating (1912) upon the levy of tolls in the canal, authorized the exemption of vessels in the United States coastwise trade on the ground, among others, that, as the coastwise trade was, in conformity with acknowledged right, exclusively reserved to American vessels, the question of equality did not enter into it, and that, so far as the rate of tolls was concerned, American vessels not engaged in the coastwise trade enjoyed no advantage. The Hay-Pauncefote treaty stipulates that the canal shall be open "on terms of entire equality," and that there shall be no "discrimination" in the "conditions or charges of traffic," which must be "just and equitable." The British government, while conceding that the United States might by way of subsidy remit or refund the tolls on its coastwise vessels, claimed that such vessels must, under the terms of the treaty, be included in the computation of the rate. This was in fact done in the schedule actually adopted; but, as the words

of the statute were broad enough to authorize their omission, the British government, being apprehensive lest they might not be included in a future computation, filed its remonstrance. In these circumstances Mr. Knox, as Secretary of State, while maintaining that the claim was not well founded, suggested, in answering it, that further discussion of it might properly be deferred till some actual violation of the right asserted under it was alleged to have taken place, and that, if such a situation should arise, the arbitration of the question might then appropriately be considered. The British ambassador briefly replied, and the diplomatic discussion rested. President Wilson, however, in a brief special address to Congress on March 5, 1914, asked that the provision exempting vessels engaged in the coastwise trade of the United States from the payment of tolls be repealed. No correspondence was submitted with the address; but the President declared that, whatever differences of opinion might exist in the United States, the meaning of the treaty was "not debated outside the United States," that "everywhere else" there was "but one interpretation," and that this interpretation precluded the exemption the repeal of which he requested. Moreover, in concluding the address, he said: "I ask this of you in support of the foreign policy of the administration. I shall not know how to deal with other matters of even greater delicacy and nearer consequence if you do not grant it to me in ungrudging measure."

After a prolonged debate, in which the merits of the question were fully examined, Congress, while granting the President's request, coupled the repeal (June 15, 1914) with the declaration that its action was not to be construed or held as a waiver or relinquishment of any right which the United States might have under its treaties with Great Britain and Panama "to discriminate in favor of" its own vessels by exempting either them or its citizens "from the payment of tolls," or as "in any way waiving, impairing, or affecting any right of the United States," either under those treaties or otherwise, "with respect to the sovereignty over or the ownership, control, and management of said canal and the regulation of the conditions or charges of traffic."

This reservation, it will be observed, is even broader than the previously authorized exemption, since it embraces American vessels generally, and not merely vessels engaged in the coastwise trade.

In connection with the freedom of the seas we may mention, as a subject somewhat related to it, the free navigation, secured by certain notable treaties, of various rivers which are international in the sense of passing in their navigable course through the territory of more than one independent country. While the question as to the right freely to navigate such streams has formed the subject of much theoretical discussion, yet its adjustment has continued to rest chiefly upon conventional arrangements. It is not doubted that rivers such as the Hudson and the Mississippi,

which are navigable only within the territory of one country, are subject to that country's exclusive control. But with regard to rivers which are navigable within two or more countries, the principle of free navigation, consecrated in the acts of the Congress of Vienna, has been consistently advocated by the United States, and has been embodied in various forms in several of its treaties. When the British government sought to deny to the inhabitants of the United States the commercial use of the river St. Lawrence, Henry Clay, as Secretary of State, appealed to the regulations of the Congress of Vienna, which should, he declared, "be regarded only as the spontaneous homage of man to the superior wisdom of the paramount Lawgiver of the Universe, by delivering His great works from the artificial shackles and selfish contrivances to which they have been arbitrarily and unjustly subjected." The free navigation of the St. Lawrence was secured temporarily by the reciprocity treaty of 1854, and in perpetuity by the treaty of Washington of 1871, which also declared the rivers, Yukon, Porcupine, and Stikine to be "forever free and open for purposes of commerce" to the citizens of both countries. For many years the government of the United States actively endeavored to secure the free navigation of the Amazon, which was at length voluntarily conceded by the Emperor of Brazil to all nations in 1866. By a treaty between the United States and

Bolivia of 1858, the Amazon and La Plata, with their tributaries, were declared to be, "in accordance with fixed principles of international law, . . . channels open by nature for the commerce of all nations." In 1852, General Urquiza, provisional director of the Argentine Confederation, decreed that the navigation of the rivers Parana and Uruguay should be open to the vessels of all nations. In the next year the United States, acting concurrently with France and Great Britain, secured the confirmation of this privilege by treaty. The State of Buenos Ayres, which had sought to control the commercial possibilities which the rivers afforded, protested against the treaties and withdrew from the confederation; but the treaty powers decided to bestow the moral weight and influence of diplomatic relations upon the government which had been prompt to recognize the liberal commercial principles of the age, and the policy of free navigation prevailed.

From Paraguay, which had sought to lead the life of a hermit state, a similar concession was obtained under peculiar circumstances. In 1853 the government of the United States sent out a naval vessel, called the *Water Witch*, under the command of Lieutenant Thomas J. Page, to survey the tributaries of the river Plate and report on the commercial condition of the countries bordering on their waters. Permission was obtained from the gov-

ernment of Brazil to explore all the waters of the Paraguay that were under Brazilian jurisdiction, and from the provisional director of the Argentine Confederation to explore all rivers within the jurisdiction of his government. The surveys of the Plate, and of the Paraguay and the Parana, had been in progress about a year and a half, when, on January 31, 1855, Lieutenant Page started from Corrientes with a small steamer and two boats to ascend the river Salado, leaving Lieutenant William N. Jeffers in charge of the *Water Witch*, with instructions to ascend the Parana as far as her draught would allow. Lieutenant Jeffers sailed from Corrientes on the 1st of February, and had proceeded only a few miles above the point where the Parana forms the common boundary between Paraguay and the Argentine province of Corrientes, when he ran aground near the Paraguayan fort of Itapiru. An hour later the *Water Witch* was hauled off and anchored; but while the crew were at dinner it was observed that the Paraguayans were getting their guns ready. Lieutenant Jeffers, though not expecting serious trouble, had the *Water Witch* cleared for action and gave directions to proceed up the river at all hazards. While he was weighing anchor, a Paraguayan canoe came alongside and a man on board handed him a paper in Spanish. This paper Jeffers declined to receive, since he did not understand the language in which it was printed, and as

soon as the anchor was raised he stood up the river, the crew at quarters. The pilot informed him that the only practicable channel lay close to the fort, on the Paraguayan side of the river, and this he directed the pilot to take. When within three hundred yards from the fort he was hailed, presumably in Spanish, by a person who was said to be the Paraguayan admiral, but not understanding the import of the hail he did not regard it. Two blank cartridges were then fired by the fort in quick succession, and these were followed by a shot which carried away the wheel of the *Water Witch*, cut the ropes, and mortally wounded the helmsman. Lieutenant Jeffers directed a general fire in return, and the action continued for some minutes. In 1858, the government of the United States sent an expedition to Paraguay to obtain reparation for this and other incidents. The American minister, who accompanied the fleet, obtained "ample apologies," as well as an indemnity of $10,000 for the family of the seaman who was killed at the wheel; and on February 4, 1859, a treaty of amity and commerce was concluded at Asuncion, by which Paraguay conceded "to the merchant flag of the citizens of the United States" the free navigation of the rivers Paraguay and Parana, so far as they lay within her dominions.

IV

FISHERIES QUESTIONS

As the cause of the freedom of the seas advanced, inordinate claims of dominion over adjacent waters naturally shrank and dwindled away. This tendency towards humaner opinions and practices may be traced in the history of fisheries questions. For more than three centuries, Denmark claimed the right, on grounds of sovereignty and dominion, to monopolize the fisheries in all the seas lying between Norway and Iceland. This claim, though eventually resisted by other powers, was acquiesced in by England by treaties made in 1400 and 1523, under which her merchants and fishermen plying their trade in those seas were required to take out licenses from the Danish King. At a later day the Dutch obtained licenses from the British government for the purpose of fishing in the North Sea. These examples serve to illustrate the practices that prevailed in times when exclusive rights were asserted not only as to fishing in gulfs and bays and in vast reaches of the open sea, but also as to particular fisheries, such as those on the Grand Banks of Newfoundland.

We have seen that among the subjects discussed by the peace commissioners of Great Britain and the United States at Paris in 1782, the two that were the most strongly contested and the last disposed of were those of the fisheries and the compensation of the loyalists. The provisional articles of peace were concluded November 30, 1782. On the 25th of that month the British commissioners delivered to the American commissioners a set of articles, containing fresh proposals from the British ministry, and representing the results of many weeks of negotiation. By these articles, the third of which related to the fisheries, the citizens of the United States were forbidden not only to dry fish on the shores of Nova Scotia, but also to take fish within three leagues of the coasts in the Gulf of St. Lawrence, and within fifteen leagues of the coasts of Cape Breton outside of that gulf. This proposal was unacceptable to the American commissioners; and on the 28th of November, John Adams drew up a counter-project, which was submitted in a conference of the commissioners on the following day. It provided that the subjects of his Britannic Majesty and the people of the United States should "continue to enjoy, unmolested, the right to take fish of every kind, on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of St. Lawrence, and in all other places, where the inhabitants of both countries used at any time heretofore to fish"; and

that the citizens of the United States should "have liberty to cure and dry their fish on the shores of Cape Sables, and any of the unsettled bays, harbors, or creeks of Nova Scotia, or any of the shores of the Magdalen Islands, and of the Labrador coast"; and that they should be "permitted, in time of peace, to hire pieces of land, for terms of years, of the legal proprietors, in any of the dominions of his Majesty, whereon to erect the necessary stages and buildings, and to cure and dry their fish." One of the British commissioners objected to the use of the word *right*, in respect of the taking of fish on the Grand Bank and other banks of Newfoundland, in the Gulf of St. Lawrence, "and in all other places, where the inhabitants of both countries used at any time heretofore to fish." Another said that "the word *right* was an obnoxious expression." Adams vehemently contended for the right of the people of America to fish on the banks of Newfoundland. "Can there be a clearer right?" he exclaimed. "In former treaties, that of Utrecht, and that of Paris, France and England claimed the right and have used the word." Finally, when he declared that he would not sign any articles without satisfaction in respect of the fishery, the British commissioners conceded the point, and after many suggestions and amendments a stipulation was agreed on which formed the third article of the provisional peace. By this article, which was based on the proposal submitted

by Adams, it was agreed that the people of the United States should continue to enjoy the "right" to take fish on all the banks of Newfoundland and in the Gulf of St. Lawrence, and "at all other places in the sea" where the inhabitants of both countries had been accustomed to fish; and that the inhabitants of the United States should have the "liberty" to take fish on the coast of Newfoundland and on the coasts, bays, and creeks of all other of his Britannic Majesty's dominions in America, and also the "liberty" to dry and cure fish, subject to an agreement with the proprietors of the ground, so soon as any of the coasts should become settled.

When the representatives of the two countries met at Ghent, on August 8, 1814, to negotiate a new treaty of peace, the British plenipotentiaries at once took the ground that the fishery arrangement of 1782–83 had been terminated by the war of 1812, and declared that, while they "did not deny the right of the Americans to fish generally, or in the open seas," they could not renew the privilege of fishing within British jurisdiction and of drying fish on the British shores without an equivalent. In the discussions that ensued, the question of the free navigation of the Mississippi, which had been secured to British subjects by the treaty of 1782–83, became coupled with that of the fisheries. The American plenipotentiaries were unwilling to renew the stipulation as to the Mississippi; the British plenipotentiaries refused

to yield the fisheries without it; and in the end, on motion of the Americans, a treaty of peace was concluded which contained no mention either of the fisheries or of the Mississippi. Both subjects were left for future negotiation.

On June 19, 1815, an American fishing-vessel, engaged in the cod-fishery, was, when about forty-five miles from Cape Sable, warned by the commander of the British sloop *Jaseur* not to come within sixty miles of the coast. This act the British government disavowed; but Lord Bathurst is reported at the same time to have declared that, while it was not the government's intention to interrupt American fishermen "in fishing anywhere in the open sea, or without the territorial jurisdiction, a marine league from the shore," it "could not permit the vessels of the United States to fish within the creeks and close upon the shores of the British territories." John Quincy Adams, who was then minister of the United States in London, maintained that the treaty of peace of 1783 "was not, in its general provisions, one of those which, by the common understanding and usage of civilized nations, is or can be considered as annulled by a subsequent war between the same parties." This position Lord Bathurst denied. He contended that the treaty of 1782–83, like many others, contained provisions of different characters—some irrevocable, and others of a temporary nature, terminable by war; and that the two governments

had, in respect of the fisheries, recognized this distinction by describing as a "right" the open sea fishery, which the United States could enjoy merely by virtue of its independence, and as a "liberty," dependent on the treaty itself, what was to be done within British jurisdiction. This position the British government continued to maintain. From 1815 to 1818 many American vessels found fishing in British waters were seized, and much ill feeling was engendered.

Such was the condition of things when, on October 20, 1818, Albert Gallatin and Richard Rush concluded with plenipotentiaries on the part of Great Britain a convention, the first article of which related to the fisheries. By this article the United States "renounce forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles" of any of the "coasts, bays, creeks, or harbours" of the British dominions in America, not included within certain limits, within which the right to fish or to dry and cure fish was expressly reserved. It was provided, however, that the American fishermen might "enter such bays or harbours" for the purposes "of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever," subject to such restrictions as might be necessary to prevent them from abusing the privileges thus reserved to them.

On June 14, 1819, an act, closely following the language of the article, was passed by the imperial parliament to carry it into effect; and from that time down to 1836, little trouble seems to have occurred. But in that year the legislature of Nova Scotia passed an act, by which the "hovering" of vessels within three miles of the coasts and harbors was sought to be prevented by various regulations and penalties; and claims were subsequently asserted to exclude American fishermen from all bays and even from all waters within lines drawn from headland to headland, to forbid them to navigate the Gut of Canso, and to deny them all privileges of traffic, including the purchase of bait and supplies in the British colonial ports. From 1839 down to 1854 there were numerous seizures, and in 1852 the home government sent over a force of war steamers and sailing vessels to assist in patrolling the coast.

With a view to adjust the various questions that had arisen, the British government in 1854 sent Lord Elgin to the United States on a special mission, and on June 5, 1854, he concluded with Mr. Marcy, who was then Secretary of State, a treaty in relation to the fisheries and to commerce and navigation. By this treaty the United States fishermen temporarily reacquired the greater part of the inshore privileges renounced by the convention of 1818. On the other hand, a reciprocal concession was granted to British fishermen on the eastern coasts of the United

States down to the thirty-sixth parallel of north latitude, and provision was made for reciprocal free trade between the United States and the British colonies in North America in various articles of commerce. This treaty came into operation on March 16, 1855. It was terminated on March 17, 1866, on notice given by the United States in conformity with its provisions. All the old questions were thus revived; but a new arrangement was effected by Articles xviii.–xxv. of the comprehensive treaty of Washington of May 8, 1871. The American fishermen were again temporarily readmitted to the privileges renounced by the convention of 1818, while the United States agreed to admit Canadian fish and fish-oil free of duty, and to refer to a tribunal of arbitration, which was to meet at Halifax, the question of the amount of any additional compensation which should be paid by the United States for the inshore privileges. On November 23, 1877, an award was made in favor of Great Britain of the sum of five million five hundred thousand dollars, or nearly half a million dollars for each of the years during which the arrangement was necessarily to continue in force. The United States protested against the award, but paid it in due course. Lest, however, the same rate of compensation should subsequently be demanded, the United States in 1883 availed itself of the right to give notice of termination of the fishery articles, and they came to

an end in 1885. A temporary arrangement was entered into for that year, under which the American fishermen continued to enjoy the privileges accorded them by the terminated articles, in consideration of President Cleveland's undertaking to recommend to Congress, when it should again assemble, the appointment of a joint commission to consider both the question of the fisheries and that of trade relations. The recommendation was submitted to Congress, but it was not adopted; and on the opening of the fishing season of 1886, seizures of American vessels began to be made. A sharp controversy followed, reviving questions not only as to the construction of the convention of 1818, but also as to the right of fishing vessels to participate in enlarged privileges of intercourse established since that time. What were the "bays" intended by the convention? Did they include only bodies of water not more than six marine miles wide at the mouth, or all bodies of water bearing the name of bays? Were the three marine miles to be measured from a line following the sinuosities of the coast, or from a line drawn from headland to headland, even where there might be no body of water bearing the name of a bay? Were American fishing vessels forbidden to traffic or to obtain supplies, even when they entered the colonial ports for one of the four purposes specified in the convention? All these questions were raised and elaborately argued. By an act of

March 3, 1887, Congress authorized the President in his discretion to adopt measures of retaliation. A negotiation was, however, subsequently undertaken, which resulted in the Bayard-Chamberlain treaty of February 15, 1888. Provision was made for delimiting the waters in which American fishermen were to be forbidden to fish. To this end, certain definite lines were expressly drawn; and, apart from these, the rule, followed in the North Sea and other fishery arrangements, was adopted, of treating as territorial waters all bays not more than ten miles wide at the mouth, the theory being that fishing could not be carried on in a free space of less than four miles, without constant danger of entering exclusive waters. Fishing vessels, when entering bays or harbors for any of the four purposes specified in the convention of 1818, were not to be required to enter or clear, unless remaining more than twenty-four hours or communicating with the shore, or to pay port dues or charges; and they were to be allowed to transship or sell their cargoes in case of distress or casualty, and to obtain on all occasions "casual or needful provisions and supplies," as distinguished from original outfits. Each vessel was to be duly numbered; but the penalty of forfeiture was to be imposed only for fishing in exclusive British waters, or for preparing in such waters to fish therein; and for any other violation of the fishery laws the penalty was not to exceed three dollars for every ton of the implicated vessel.

It was further stipulated that all restrictions should be removed from the purchase of bait, supplies, and outfits, the transshipment of catch, and the shipping of crews, whenever the United States should remove the duty from the fishery products of Canada and Newfoundland. This treaty enjoys the distinction of being the only one that was ever, by formal resolution of the Senate, discussed in open session, so that the speeches upon it may be found in the daily record of the Congressional debates. Late in August, 1888, after a long and animated debate, it was rejected. President Cleveland then recommended to Congress a definite course of retaliation, looking immediately to the suspension of the bonded-transit system. This recommendation failed; and a *modus vivendi*, which was arranged by the negotiators of the defeated treaty at the time of its signature, and under which a system of licenses was established, continued for the time being to operate by virtue of Canadian orders in council. The fisheries question was one of the subjects considered by the Quebec commission of 1898, but no conclusive results on any matter were reached by that body.

In recent years various efforts have been made to create closer relations between the United States and Canada. In 1908 and 1909 treaties were concluded for the more complete definition and demarcation of the international boundary; for the adoption of measures (which the United States afterwards failed

to make effective) for the preservation and propagation of food fishes in the waters contiguous to the two countries; for the conveyance through the one country of persons in lawful custody for trial or punishment in the other; for reciprocal rights in wrecking and salvage in waters contiguous to the boundary; and for the regulation of the use of boundary waters in such manner as to preserve their navigability while promoting industrial interests.

By an agreement of January 27, 1909, the north Atlantic fisheries dispute was referred to The Hague Court. Five arbitrators sat, and, September 7, 1910, signed the award,[1] holding that Great Britain, or the local colony, might by laws or ordinances designed to preserve the fisheries or public order and morals, but subject to review by a mixed commission of experts, regulate the exercise of the "liberties" not renounced in 1818; that, while persons not inhabiting the United States might be enrolled on American fishing-vessels, they gained no treaty immunities; that such vessels, though exempt from commercial formalities, and from dues not imposed on British fishermen, should, if proper conveniences existed, report their presence, and, even when coming in for shelter, repairs, wood, or water, might be required when staying over forty-eight hours similarly to report, personally or by telegraph. Amer-

[1] Dr. H. Lammasch (Austria), who presided; Jonkheer A. F. De Savornin Lohman (The Netherlands); the Hon. George Gray (United States); Sir Charles Fitzpatrick (Canada); Dr. Luis M. Drago (Argentina), who dissented on one point.

ican fishing-vessels, if commercially documented, might, it was held, exercise commercial privileges, but not when on a fishing voyage. The award, adopting the provisions of the Bayard-Chamberlain arrangement, delimited certain waters as exclusively British, and for the rest recommended, as to bays, the ten-mile rule. The right of the Americans to fish on the treaty coasts of Newfoundland and the Magdalen Islands, was affirmed.

On January 6, 1911, a reciprocal commercial agreement was submitted to the legislative bodies of the United States and Canada. Certain incidents, among which were the utterances of American public men, turned the discussion in Canada to the question of preserving "Canadian nationality"; and on an appeal to the country, the agreement was decisively rejected. The wood-pulp and paper schedules had, as the result of anticipatory legislation, at once taken effect in the United States, and, when the agreement failed, other countries exporting those articles made claims for their admission to the United States on the same terms as similar Canadian products. These claims the customs authorities denied, but the courts subsequently upheld them.

In its later phases the discussion of the north-eastern fisheries came to involve only to a comparatively slight extent any question as to the use of the open sea. Very different in that respect was the Bering Sea controversy, which arose in regard to the fur-seals in 1886. By an imperial ukase or edict of

July 8, 1799, Paul I. of Russia granted to the Russian-American Company various important rights on the Russian coasts in America, including that of fishing. Twenty-two years later—on September 7, 1821—there was issued by the Emperor Alexander another ukase, the apparent effect of which was much more far-reaching, since it purported to exclude foreigners from carrying on commerce and from whaling and fishing on the northwest coast of America, from Bering Strait down to the fifty-first parallel of north latitude, and forbade them even to approach within a hundred Italian miles of the coast. Against this ukase both the United States and Great Britain protested, and it was never enforced. On the other hand, a convention was concluded between the United States and Russia on April 17, 1824, by which it was agreed that "in any part of the great ocean, commonly called the Pacific Ocean, or South Sea," the citizens or subjects of the high contracting parties should be "neither disturbed nor restrained, either in navigation or in fishing." A treaty in similar terms was made by Great Britain in the following year. By a convention signed at Washington on March 30, 1867, the Russian Emperor, in consideration of the sum of seven million two hundred thousand dollars in gold, ceded "all the territory and dominion" which he possessed "on the continent of America and in the adjacent islands" to the United States. Of this cession, the eastern limit was that

defined in the treaty between Great Britain and Russia of 1825. The western limit was defined by a water line, which was drawn so as to include in the territory conveyed numerous islands.

In 1886 certain Canadian sealers were seized by United States revenue-cutters in Bering Sea, at a distance of upwards of sixty miles from the nearest land. The United States Court at Sitka pronounced a sentence of condemnation, but the President subsequently ordered the vessels to be released; and on August 17, 1887, Mr. Bayard, as Secretary of State, instructed the American ministers at London, Paris, and certain other capitals, to invite the governments to which they were accredited to co-operate with the United States in measures for the better protection of the fur-seals. It was represented that, as the result of indiscriminate killing, the seals were in danger of extermination, and that the nations had a common interest in preventing this from being done. The responses to this overture were generally favorable, and negotiations with Great Britain had practically reached a favorable conclusion, when, on May 16, 1888, nine days after the adverse report of the Committee on Foreign Relations of the United States Senate on the Bayard-Chamberlain treaty, they were arrested on an objection from the Canadian government. On the 12th of the following September, Mr. E. J. Phelps, then American minister in London, in a despatch to Mr. Bayard, suggested that the

United States might of its own motion take measures to prevent the destruction of the fur-seals by capturing on the high seas the vessels employed in it. This suggestion was not then adopted; but, after the change of administration in 1889, seizures were renewed. A warm dispute followed, in which Mr. Blaine sought to defend the seizures on the ground that the killing of seals in the open sea was *contra bonos mores*, as well as on the supposition that Russia had asserted and exercised exclusive rights in Bering Sea, and that the treaties of 1824 and 1825 did not apply to that body of water. On February 29, 1892, however, a treaty was signed, by which a tribunal of arbitration,[1] to sit at Paris, was invested with power to decide: (1) what exclusive jurisdiction, or exclusive rights in the seal-fisheries, in Bering Sea, Russia asserted prior to the cession of Alaska to the United States; (2) how far those claims were recognized by Great Britain; (3) whether Bering Sea was included in the phrase "Pacific Ocean," as used in the treaties of 1824 and 1825; (4) whether all Russia's rights passed to the United States; and (5) whether the United States had any right of protection or property in the fur-seals in Bering Sea outside the ordinary three-mile limit. If the arbitrators found that the exclusive rights of the United States were insufficient, they were to determine what

[1] For the personnel of this tribunal see infra, p. 318.

concurrent regulations the two governments should jointly enforce outside territorial waters.

Before the tribunal of arbitration, the representatives of the United States relied much upon a theory of property in fur-seals; but on the various questions of right submitted, the decision of the arbitrators was adverse to the United States. This result was due, however, not to any lack of ability or of effort on the part of the accomplished American agent and counsel, who exhausted every resource of argument, but to certain historical and legal antecedents, among which we may mention the following:

1. That, when the first seizures were reported in 1886, the Department of State not only possessed no information concerning them, but was unable to give any explanation of them, and that, when the circumstances of the seizures were ascertained, even though the full judicial record had not then been received, the vessels were ordered to be released.

2. That the court in Alaska, in condemning the vessels and punishing their masters and crews, proceeded on a doctrine of *mare clausum*, which the United States had never legally asserted and which the government afterwards disavowed. It is indeed generally supposed, and the supposition apparently is shared by the Supreme Court, that Mr. Blaine in his correspondence claimed that the United States had derived from Russia exclusive dominion over Bering Sea. It is, however, a fact that in a note to Sir

Julian Pauncefote, December 17, 1890, Mr. Blaine said: "The government has never claimed it and never desired it; it expressly disavows it." Whether this sweeping denial is or is not altogether justified by the record is a question that need not be here considered.

3. That the treaty ceding Alaska to the United States did not purport to convey the waters of Bering Sea, but in terms conveyed only "the territory and dominion" of Russia "on the continent of America and in the adjacent islands," and drew a water boundary so as to effect a transfer of the islands, many of them nameless, which lay in the intervening seas. The fact was, besides, well known that a declaration, once inadvertently or inconsiderately adopted by the House of Representatives, that the jurisdiction of the United States extended over those seas, was rejected by the Senate.

4. That the ukase of 1821, which contained the only distinctive claim of *marc clausum* ever put forward by Russia, did not assume to treat the whole of Bering Sea as a close sea, but only to exclude foreign vessels from coming within one hundred Italian miles of the coast, from the fifty-first parallel of north latitude to Bering Strait, without discrimination as to localities.

5. That against this ukase both the United States and Great Britain protested; and that by the treaties of 1824 and 1825 Russia agreed not to interfere with their citizens or subjects either in navigating or in

fishing in "any part of the Pacific Ocean," thus abandoning the exclusive jurisdictional claim announced in the ukase.

6. That it was declared by Mr. Blaine in the diplomatic correspondence that if the phrase "Pacific Ocean," as used in those treaties, included Bering Sea, the United States had "no well-grounded complaint" against Great Britain; and that it was unanimously found by the arbitrators that the phrase Pacific Ocean did include Bering Sea.

7. That while the tribunal, by six voices to one, found that there was no evidence to substantiate the supposition that Russia had asserted exceptional claims as to the fur-seals, there was affirmative evidence that she had not done so in recent years. In reality, most of the specific passages from early Russian documents, given in the case of the United States to substantiate Russia's supposed exclusive claims, proved to be the interpolations of a dishonest translator, and were spontaneously withdrawn by the agent of the United States on his discovery of the circumstances, soon after the cases were exchanged. These interpolations, however, did not figure in the diplomatic correspondence, but were made after its close.

8. That it was admitted that no municipal law of the United States had ever treated the fur-seals, either individually or collectively, as the subject of property and protection on the high seas.

9. That it was also admitted by the representa-

tives of the United States that, for the claim of property and protection on the high seas, there was no precise precedent in international law, though it was strongly maintained that the claim was justified by analogies.

10. That the effort to support this claim was embarrassed by its relation to the subject of visitation and search on the high seas, and especially by the precedents which the United States itself had made on that subject.

The question of regulations stood on different grounds—that of international co-operation, proposed in 1887. The arbitrators, after deciding against the United States on questions of right, proceeded to prescribe regulations, which were afterwards duly put into operation by the two governments. Under a treaty of arbitration signed at Washington on February 8, 1896, the sum of $473,151.26 was awarded as compensation to be paid by the United States for interference with the Canadian sealers.

In spite of the efforts made for their protection, the number of seals diminished rather than increased. Warm discussions, conducted with epithets as well as with figures, took place as to the respectively injurious effects of pelagic sealing and killing on land. Besides, the controversy tended, like that regarding the suffrage, to follow sexual lines, the killing on land affecting chiefly the fathers of the race, while that on the sea destroyed chiefly the mothers. Eventu-

ally, a further treaty was entered into by the United States and Great Britain on February 7, 1911, but its provisions were in the main either duplicated or superseded by the treaty concluded at Washington, on the 7th of the following July, between the United States, Great Britain, Japan, and Russia, for the protection of sea-otters as well as of fur-seals. By this treaty the contracting parties agreed for a definite period of fifteen years to prohibit all persons subject to their laws and treaties, and also their vessels, from engaging in "pelagic sealing"—which was defined, for the purposes of the convention, as the "killing, capturing, or pursuing" in the waters of the north Pacific above 30° latitude, including the seas of Bering, Kamchatka, Okhotsk, and Japan. The waters thus designated were to be patrolled. Offenders against the treaty were subject to arrest on the high seas by the authorities of any of the contractants, but must be handed over to their own nation for trial; while skins not certified as taken under the authority of the respective powers were excluded from importation. Sea-otters were similarly protected.

On the other hand, the powers undertook to solace one another for foregoing the exercise of the right to kill at sea by furnishing certain compensations, chiefly out of the profits of killing on land. In case the number of seals visiting the United States islands in any year fell below 100,000, or the Russian islands below 18,000, or the Japanese below 6,500, it was per-

missible to suspend all killing without any allowance in skins or in money till the specified standard should again be exceeded. Subject to this stipulation, each of the powers possessing, within the designated area, islands and shores frequented by seals, agreed to deliver up a certain gross percentage, in number and value, of the skins thereon taken. Of the skins taken on the islands and shores of the United States and of Russia, the governments of Canada and Japan were each to receive 15 per cent., while of those taken on Japanese islands and shores, the United States, Japan, and Russia were each to get 10 per cent.; but it was further stipulated that Canada and Japan should each receive from the American herd not less than one thousand skins annually. In case any British islands or shores should become the resort of seals, the United States, Japan, and Russia were each to receive 10 per cent. of the skins thereon taken. These stipulations, however, do not limit the right of the territorial sovereigns from time to time altogether to suspend the killing of seals on their respective shores and islands, or to impose restrictions and regulations necessary to protect and preserve the herd and to increase its number. But, if killing is altogether prohibited, for any reason other than that the number of visiting seals has fallen below the standard, then the United States must during such suspension pay Great Britain and Japan each an annual sum of $10,000, for which it may, after killing is resumed, reimburse itself by retaining

skins taken in excess of the minimum of one thousand agreed to be turned over. Russia agreed, during the last ten years of the conventional term of fifteen, to kill in each year at least 5 per cent. of the seals visiting her hauling-grounds and rookeries, provided this did not exceed 85 per cent. of the three-year-old male seals hauling in such year. Japan made a similar engagement in regard to the killing of her seals. Finally, the United States agreed, when the treaty took effect, to advance to Great Britain and to Japan, each, on account of the skins to which they would be entitled, the sum of $200,000, and to repay itself by retaining an equivalent in skins, reckoned by their market value in London less cost of transportation, such reckoning, if disputed, to be made by an "umpire," chosen by the governments concerned.

In explanation of the standard of valuation thus adopted, the fact may be stated that London had for many years been the almost exclusive seat of the industry of dressing sealskins. The undressed skins, therefore, for the most part found their way thither; and it was the only place where a market value of such skins, resulting from public sales at stated seasons, could then be said to exist. These circumstances also help to elucidate the diversity, which prior negotiations had at times disclosed, between the inclinations of the British and those of the Canadian government, the latter having an immediate interest in pelagic sealing, while the former was substantially interested in preserving a flourishing industry which

was said to affect the livelihood of ten thousand persons in England, and which was dependent upon a steady and permanent supply of the raw material.

References:

For a history of the North Atlantic Fisheries, see Moore's *Digest of International Law*, I, 767 *et seq.*; Moore's *History and Digest of International Arbitrations*, I, chap. 16 (The Halifax Commission); chap. 13 (Reserved Fisheries); Rush's *Memoranda of a Residence at the Court of London;* Gallatin's Writings.

For the Award of The Hague Court (in 1910), see *Foreign Relations of the United States*, 1910, p. 544 *et seq.*

For a history of the Bering Sea Dispute, see Moore's *History and Digest of International Arbitrations*, I, chap. 17 (Fur Seal Arbitration).

V

THE CONTEST WITH COMMERCIAL RESTRICTIONS

When viewed in their wider relations, the early efforts of the United States to establish the rights of neutrals and the freedom of the seas are seen to form a part of the great struggle for the liberation of commerce from the restrictions with which the spirit of national monopoly had fettered and confined it. When the United States declared their independence, exclusive restrictions, both in the exchange of commodities and in their transportation, existed on every side. The system of colonial monopoly was but the emanation of the general principle, on which nations then consistently acted, of regarding everything "bestowed on others as so much withholden from themselves." Prohibitions and discriminations were universal.

Such was the prospect on which the United States looked when they achieved their independence. With exceptions comparatively unimportant, there was not a single port in the Western Hemisphere with which an American vessel could lawfully trade, outside of its own country. But the exclusion

most seriously felt was that from the British West Indies. Prior to the Revolution the burdens of the restrictive system were essentially mitigated by the intercolonial trade, the British colonists on the continent finding their best markets in the British islands; but when the United States, by establishing their independence, became to Great Britain a foreign nation, they at once collided with her colonial system. American statesmen foresaw these things and endeavored to guard against them, but in vain. When the provisional articles of peace with Great Britain were later converted into a definitive treaty, without the addition of any commercial clauses, the hope of establishing the relations between the two countries at the outset on the broad basis of mutual freedom of intercourse disappeared.

In the contest with commercial restrictions, the government of the United States adopted as the basis of its policy the principle of reciprocity. In its later diplomacy the term "reciprocity" is much used to denote agreements designed to increase the interchange of commodities by mutual or equivalent reductions of duty. Tested by recent experience, the later "reciprocity" might not inaptly be described as a policy recommended by free-traders as an escape from protection, and by protectionists as an escape from free trade, but distrusted by both and supported by neither. It is, however, impossible to doubt that, in the efforts of the United States

to bring about the abolition of the cumbersome and obstructive contrivances of the old navigation laws, the policy of reciprocity proved to be an efficient instrument in furthering the tendency towards greater commercial freedom. It was announced by the government at the very threshold of its existence. In the preamble to the treaty of commerce with France of 1778, it was declared that the contracting parties, wishing to "fix in an equitable and permanent manner" the rules that should govern their commerce, had judged that this end "could not be better obtained than by taking for the basis of their agreement the most perfect equality and reciprocity, and by carefully avoiding all those burthensome preferences which are usually sources of debate, embarrassment, and discontent; by leaving, also, each party at liberty to make, respecting commerce and navigation, those interior regulations which it shall find most convenient to itself; and by founding the advantage of commerce solely upon reciprocal utility and the just rules of free intercourse; reserving withal to each party the liberty of admitting at its pleasure other nations to a participation of the same advantages." John Quincy Adams, in 1823, while avowing the belief that this preamble was "the first instance on the diplomatic record of nations, upon which the true principles of all fair commercial negotiation between independent states were laid down and proclaimed to the

world," at the same time declared that it "was, to the foundation of our commercial intercourse with the rest of mankind, what the Declaration of Independence was to that of our internal government. The two instruments," he added, "were parts of one and the same system matured by long and anxious deliberation of the founders of this Union in the ever memorable Congress of 1776; and as the Declaration of Independence was the foundation of all our municipal institutions, the preamble to the treaty with France laid the corner-stone for all our subsequent transactions of intercourse with foreign nations."

The progress of the United States, in the contest thus early begun with commercial restrictions, was painful and slow. Soon after the establishment of independence, Congress took into consideration the entire subject of commercial relations, and on May 7, 1784, adopted a series of resolutions in which the principles by which American negotiators should be guided were set forth. By the first of these resolutions it was declared that, in any arrangements that might be effected, each party should have the right to carry its own produce, manufactures, and merchandise in its own vessels to the ports of the other, and to bring thence the produce and merchandise of the other, paying in each case only such duties as were paid by the most-favored nation. The second resolution, which related to colonial

trade, embodied the proposal that a direct and similar intercourse should be permitted between the United States and the possessions of European powers in America, or at any rate between the United States and certain free ports in such possessions; and that, if neither of these alternatives could be obtained, then each side should at least be permitted to carry its own produce and merchandise in its own vessels directly to the other. When the wars growing out of the French Revolution began, no progress had been made by the United States towards the attainment of the objects of the second resolution. American vessels laden with the produce of their own country, and in some cases when laden with the produce of other countries, were admitted into most of the European ports, including those of Great Britain, on condition of paying the customary alien dues; but the ports of the colonies continued to be closed against them, while some of the most important American products were specifically excluded from the trade which vessels of the dominant country were permitted to carry on between its colonies and the United States. When authorizing Gouverneur Morris, as an informal agent, in 1789, to sound the views of the British ministry concerning relations with the United States, Washington said: "Let it be strongly impressed on your mind that the privilege of carrying our productions in our vessels to their islands, and bringing in return

the productions of those islands to our own ports and markets, is regarded here as of the highest importance; and you will be careful not to countenance any idea of our dispensing with it in a treaty." In the following year Morris reported that no arrangement on the subject could be made. The question was, however, revived in the instructions given to Jay, as special plenipotentiary to England, on May 6, 1794. He was directed to secure for American vessels the privilege of carrying between the United States and the British West Indies the same articles as might be transported between the two places in British bottoms, and, unless he could obtain this, he was to do no more than refer to his government such concessions as might be offered. He submitted to Lord Grenville a proposal in this sense, but, although it was limited to American vessels of not more than a hundred tons burden, it was rejected. So important, however, did Jay conceive it to be to obtain some relief from the colonial restrictions that, in spite of his instructions, he assented to the incorporation into the treaty, which was signed by him and Lord Grenville on November 19, 1794, of an article by which the privilege of trading between the United States and the British West Indies was for a term of years extended to American vessels of a burden of not more than seventy tons, but only on condition that, during the continuance of the privilege, the United States

should prohibit and restrain the carrying of any molasses, sugar, coffee, cocoa, or cotton in American vessels, either from the British islands or from the United States itself, to any port not in the United States. It was argued that this condition, by which American vessels were to be forbidden to transport from their own country any of the specified commodities, even though produced there or in a third country, was essential as a safeguard against abuse of the treaty privilege. American vessels, it was said, might, after importing a cargo from the British islands, carry it on to Europe, under the guise of a feigned American product, and thus destroy the exclusive advantages which were to continue to belong to British shipping. But the price was deemed by the United States to be too high for the limited privilege that was gained. The Senate, in assenting to the ratification of the treaty, struck out the obnoxious article. The treaty, however, provided that the citizens of the two countries might freely pass and repass by land, or by inland navigation, into the territories of the one and the other on the continent of America (the country within the limits of the Hudson's Bay Company only excepted), and carry on trade and commerce with each other in that way. American vessels were expressly excluded from any seaports in such territories; but, by another article of the treaty, they were admitted on certain conditions to a direct

trade with the British dominions in the East Indies.

During the long wars that grew out of the French Revolution, colonial restrictions in America were from time to time suspended under military necessity. The home governments, when unable to carry on the trade under their own flag, were at times reluctantly obliged to open it to neutral ships in order that it might not perish altogether. As early as March 26, 1793, the ports of the French colonies in America were opened on certain terms to the vessels of neutral countries. On June 9, 1793, Spain opened the ports of New Orleans, Pensacola, and St. Augustine to friendly commerce, but foreign vessels were required to touch at Corcubion, in Galicia, or at Alicant, and obtain a permit, without which no entry into the specified ports was allowed. Seventeen years later there began, in a conservative revolt against the Napoleonic domination in Spain, the movement in the Spanish colonies in America that was gradually to be transformed into a genuine struggle for independence, a struggle that was to end in the liberation of Spain's vast continental domain in the Western Hemisphere from the bonds of colonial monopoly. With the concurrent independence of Portugal's great colony, Brazil, the system for the most part disappeared from the American continents, below the northern boundary of the United States. But, emerging

from the long Napoleonic struggle triumphant, Great Britain retained her authority over her colonies, and had even added to their number. With her the question of colonial restrictions therefore still remained. It had never ceased, except during the war of 1812, to be a subject of consideration. Monroe and Pinkney had vainly endeavored to settle it in 1806. After the ratification of the treaty of Ghent, the discussion was resumed. John Quincy Adams, with his accustomed energy and dialectic force; Richard Rush, with his wonted tact and wise judgment, and Albert Gallatin, with all his penetrating and persuasive reasonableness, had all essayed to arrange it, but without avail. In 1817, Lord Castlereagh proposed to extend to the United States the provisions of the "free port" acts, the effect of which would have been to admit to a limited trade American vessels of one deck; but this proposal was rejected, and by the act of Congress of April 18, 1818, the ports of the United States were closed against British vessels coming from any British colony which was, by the ordinary laws of navigation and trade, closed against American vessels; and British vessels sailing from the United States were put under bond to land their cargoes elsewhere than in such a colony. By an act of May 15, 1820, these restrictions were specifically made applicable to any British colonial port in the West Indies or America. In 1822 these restrictions were partially

suspended, in reciprocal recognition of the opening of certain colonial ports to American vessels under certain conditions. By the act of Congress of March 1, 1823, this suspension was continued, but a claim was also put forth, which had previously been advanced by the United States in negotiation but had always been resisted by Great Britain, that no higher duties should be imposed in the colonial ports on articles imported from the United States in American vessels, than on similar articles when imported in British ships from any country whatsoever, including Great Britain herself and her colonies. This claim had been a favorite one with Mr. Adams, on the supposition that its acceptance was necessary to assure to American vessels their full share of the carrying-trade; and it was now proposed to enforce it by means of discriminating duties. Its attempted enforcement immediately led to the imposition of countervailing duties by Great Britain. Such was the condition of things when, by the act of July 5, 1825, Parliament opened the trade with the British colonies in North America and the West Indies to the vessels of all nations, on specified conditions. The government of the United States failed to accept these conditions, with the result that on December 1, 1826, direct intercourse between the United States and the British-American colonies, in British as well as in American vessels, was almost wholly suspended.

In learning how an escape was found from this dilemma, we shall see how the unmaking of a minister contributed to the making of a President. When Andrew Jackson was inaugurated as President, in 1829, Martin Van Buren became his Secretary of State, and Louis McLane was sent as minister to the court of St. James. In a speech in the Senate in February, 1827, Van Buren had criticised the administration then in power for its omission to accept the conditions prescribed in the act of Parliament of 1825. The views which he then expressed he embodied on July 20, 1829, in an instruction to McLane. In concluding a long and able review of the controversy with Great Britain, Van Buren declared that there were three grounds on which the United States was assailable. The first was "in our too long and too tenaciously resisting the right of Great Britain to impose protecting duties in her colonies"; the second, "in not relieving her vessels from the restriction of returning direct from the United States to the colonies, after permission had been given by Great Britain to our vessels to clear out from the colonies to any other than a British port"; and the third, "in omitting to accept the terms offered by the act of Parliament of July, 1825." McLane was authorized to say that the United States would open its ports to British vessels coming from the British colonies laden with such colonial products as might be im-

ported in American vessels, on condition that Great Britain would extend to American vessels the privileges offered by that act. In these instructions Van Buren only re-echoed the views which Gallatin had strongly expressed to the Department of State in his despatches in 1826. But Van Buren did not stop here. He directed McLane not to "harass" the British cabinet by the repetition of prior discussions, but, if the course of the late administration should be brought up, to say that its views had been submitted to the people of the United States, that the counsels by which his own conduct was directed represented the judgment expressed by the only earthly tribunal to which the late administration was amenable for its acts, and that to set up those acts as the cause of withholding from the people of the United States privileges, which would otherwise be extended to them, would be unjust in itself and could not fail to excite their deepest sensibility. McLane duly communicated to the British government the entire purport of his instructions. His negotiations were altogether successful. By a proclamation issued by President Jackson on October 5, 1830, under the authority of an act of Congress of the 29th of the preceding May, the ports of the United States were declared to be open to British vessels and their cargoes coming from the colonies, on payment of the same charges as American vessels coming from the same quarter. An order in

council issued November 5, 1830, extended to American vessels reciprocal privileges. The last remnants of the vicious system that was thus broken down were removed in 1849.

In 1831 McLane resigned his post in London, and Van Buren was appointed by the President to fill the vacancy. He arrived in England in September, and entered upon the discharge of the duties of his office. On January 25, 1832, the Senate, of which he had so recently been a member, refused to confirm him. In the memorable debate that preceded his rejection, his pointed and censorious disavowal, in the instructions to McLane, of responsibility for the acts of the preceding administration, formed a principal ground of objection. It was eloquently declared by his Whig opponents that party differences should not be injected into international discussions. The criticism was essentially sound; but, in the popular estimation, the punishment was altogether disproportionate to the offence. A widespread impression that its infliction was inspired by resentment, occasioned by party defeat, greatly enhanced Van Buren's political strength.

While the contest with colonial restrictions was going on, steady progress was made towards the accomplishment of the design, propounded by the Continental Congress in 1776, of placing the foreigner, in respect of commerce and navigation, on an equal footing with the native, and to this end

of abolishing all discriminating charges whatsoever. "This principle," once declared John Quincy Adams, "is altogether congenial to our institutions, and the main obstacle to its adoption consists in this: that the fairness of its operation depends upon its being admitted universally." Before the formation of the Constitution, the several States were driven for purposes of retaliation to impose discriminating duties on foreign vessels and their cargoes. The system was continued by the government of the United States, for the same reason. By an act of March 3, 1815, however, Congress offered to abolish all discriminating duties, both of tonnage and of impost, on foreign vessels laden with the produce or manufactures of their own country, on condition of the concession of a reciprocal privilege to American vessels. By "discriminating duties" are meant all duties in excess of what would be charged, in the particular country, one of its own vessels and the cargo imported in it. This principle first found conventional expression in the treaty of commerce and navigation with Great Britain of July 3, 1815; but its operation was therein confined, on the part of that power, to the British territories in Europe. By the act of Congress of March 1, 1817, the offer made in the act of 1815 was enlarged, by including vessels belonging to citizens either of the country by which the goods were produced or manufactured, or of the country from which they could only be, or most

usually were, first shipped for transportation. The final step was taken in the act of March 24, 1828, which is still in force, and by which a standing offer was made for the reciprocal abolition of all discriminating duties, without regard to the origin of the cargo or the port from which the vessel came. The provisions of this statute have been extended to many countries by proclamation, and the principle on which they are founded is confirmed by numerous treaties.

With the passing away of the old system of exclusions and discriminations in the West, the activities of American diplomacy were directed more and more to the East, where the expansion of commerce was hindered by various conditions, presenting every phase of obstruction from general insecurity to positive non-intercourse. In 1830 a treaty of commerce and navigation was concluded with the Ottoman Empire, with which a trade had been carried on under the somewhat costly shelter of the English Levant Company. But a wider field awaited the spirit of enterprise in the Far East. In August, 1784, less than a year after the definitive peace with Great Britain, a New York ship, the *Empress of China*, bore the American flag into Canton. Before the close of the century, American vessels had prosecuted their adventures in trading and in fishing into all parts of the Pacific. It was an American ship, fitted out at Boston for the fur-trade, that

entered and explored in 1792 the "River of the West" and gave to it its name, Columbia. Even the stern barriers of Spanish colonial exclusion failed to withstand the assaults of American energy in the trade carried on between the shores of America and the shores of Asia. In time, private initiative was powerfully reinforced by the action of government. In 1832 Edmund Roberts, a sea-captain of Portsmouth, New Hampshire, was appointed by President Jackson as "agent for the purpose of examining in the Indian Ocean the means of extending the commerce of the United States by commercial arrangements with the powers whose dominions border on those seas." Taking with him blank letters of credence, he embarked in March, 1832, on the sloop-of-war, *Peacock*, for his long voyage of inquiry and negotiation. If we were to judge by the provision made for his comfort and remuneration, we should infer that little importance was attached to his mission. Rated on the *Peacock* as "captain's clerk," his pay was barely sufficient to defray the cost of an insurance on his life for the benefit of his numerous children; and for three months he was obliged to lie on the sea-washed gun-deck with the crew, all the available space in the cabin being occupied by a *chargé d'affaires* to Buenos Ayres whose name is now forgotten. He touched at all the important countries eastward of the Cape of Good Hope, except those on the Bay

of Bengal. He visited Java three times, on one occasion remaining at Batavia nearly two months. At Manila, where the crew were attacked by cholera, the *Peacock* was compelled to put to sea with her deck converted into a hospital. In Siam, and in the countries bordering on the Persian Gulf and the Red Sea, Roberts endured many hardships and encountered many perils. But his sacrifices were not in vain. On March 30, 1833, he concluded a treaty of amity and commerce with Siam, and on September 21st signed a similar treaty with the Sultan of Muscat. He returned to the United States, in 1834, on the U. S. S. *Lexington*. His treaties were promptly approved by the Senate. He then returned to the East, sailing again in a man-of-war. His diplomatic career ended in 1836, at Macao, where he fell a victim to the plague. In 1839 Congress, recognizing the gross inadequacy of the recompense that had been made for his exceptional services, granted to his legal representatives a belated requital. If the successful performance of important public duties, unhampered by any thought of personal aggrandizement, forms a just title to remembrance, there can be no doubt that an abiding place in our history belongs to this pioneer of American diplomacy in Asia.

Roberts was empowered to negotiate a treaty with Cochin China, but in this task he made no progress. In all the vast Chinese Empire only one port

—that of Canton—was accessible to foreign merchants. The first permanent breach in the wall of seclusion was made by the treaty between Great Britain and China, signed at Nanking, August 29, 1842, at the close of the opium war. By this treaty the ports of Canton, Amoy, Foochow, Ningpo, and Shanghai were opened to British subjects and their commerce, and the island of Hongkong was ceded to Great Britain as an entrepôt. A supplementary treaty of commerce and navigation was concluded in the following year. The United States soon appeared in the breach. By the act of Congress of March 3, 1843, the sum of forty thousand dollars was placed at the disposal of the President to enable him to establish commercial relations with China on terms of "national equal reciprocity." On May 8th, Caleb Cushing, of Massachusetts, was appointed to the mission with the title of minister plenipotentiary and commissioner. The choice was fortunate. No public character in America has possessed a mind more versatile or talents more varied than Cushing. Lawyer, jurist, politician, soldier, and diplomatist, a student of literature and of science, and an accomplished linguist, he responded to the demands of every situation, promptly and without embarrassment. So prodigious and insatiable was his acquisitiveness that, as the tradition runs in the Department of State, when deprived of other mental pabulum he would memorize the

groups of figures in the cipher code. When he set out for China, a squadron of three vessels was placed at his disposal. On February 27, 1844, writing from the flag-ship *Brandywine*, in Macao Roads, he announced to the governor-general of the two Kwang provinces his arrival with full powers to make a treaty. He encountered the usual evasions; but, after an exchange of correspondence, he learned early in May that Tsiyeng, the negotiator of the treaties with Great Britain, had been appointed as imperial commissioner to treat with him. Tsiyeng arrived outside Macao on June 16th, and next day entered the village of Wang Hiya, where with his suite he lodged in a temple that had been prepared for him. On June 21st, after an exchange of official visits, Cushing submitted a project of a treaty. In communicating it he stated that his government desired to treat on the basis of "cordial friendship and firm peace," that it did not desire any part of the territory of China, and that, while it would be happy to treat on the basis of opening all ports, yet, if China so desired, it would be content with a free and secure commerce with the five ports opened by the British treaty. The negotiations proceeded steadily, and on July 3, 1844, a treaty was signed. The point of diplomatic representation at Peking was yielded with the express understanding that, in case it should be conceded to other Western powers, the envoy of the United States should like-

wise be received. All the commercial privileges obtained by Great Britain for her subjects were, with some variations, extended to citizens of the United States; and American citizens were, like British subjects, exempted from Chinese jurisdiction. A curious light is thrown on American enterprise by a correspondence which Cushing, before his return to the United States, had with two American citizens who had established a ship-yard on the Chinese coast, opposite Hongkong, and who had been ordered away. Cushing advised them to acquiesce in the action of the Chinese authorities, in view of the stipulations of the treaty which he had just concluded.

A new treaty was made in 1858; and ten years later a special Chinese embassy, headed by Anson Burlingame, signed at Washington the treaty that is known by his name. In entering the service of China, after a notable career of six years as American minister at Peking, Burlingame declared that he was governed by the interests of his country and of civilization; and his course was approved by his government. The rule that the United States will not receive as a diplomatic representative of a foreign power one of its own citizens was in his case gladly waived. As American minister at Peking, he sought "to substitute fair diplomatic action in China for force," a policy which Mr. Seward "approved with much commendation."

Through the vicissitudes of the years that have since elapsed it may be said that the United States has, in its commercial dealings with China, uniformly been guided by the principle of the "open door"; for, although the institution of that policy is popularly associated in the United States with Mr. Hay's circular of September 6, 1899, neither the phrase nor the principle denoted by it in any sense originated with that measure. The phrase was used, as a current form of expression, by the American peace commissioners at Paris in 1898, in the demand, made under instructions from their government, for the cession of the Philippines. In that demand they expressly declared it to be the purpose of the United States to maintain in the islands "an open door to the world's commerce." The phrase "open door" is but a condensed expression of the principle of "equal and impartial trade" for all nations; and in the treaty of peace between the United States and Spain it was precisely exemplified to the extent of the stipulation that the United States would, for the term of ten years, "admit Spanish ships and merchandise to the ports of the Philippine Islands on the same terms as ships and merchandise of the United States."

The United States, in espousing the cause of the "open door" in China in 1899, sought, not to establish a new principle there, but to prevent the abandonment of the old for the policy of leases and spheres of influence which the European powers,

whether with a view to self-aggrandizement or to the avoidance of war with one another, seemed ready to adopt. The position of the United States was, however, appreciably weakened by its prompt relinquishment of consular jurisdiction within the leased territories. As Chinese sovereignty was by the terms of the leases professedly reserved, Japan logically took the ground that consular jurisdiction, which was exercised under treaties with China, remained unimpaired; but the European governments, each looking to the exercise of supreme power within its own leased area, yielded to one another's wishes. The United States did not contest their claim, but, on the contrary, accepted it without protest or reservation.

In the disorders following the Boxer Rebellion the United States adhered to its previous declarations of policy. In his celebrated circular of July 3, 1900, while the foreign legations at Peking were besieged and all communication with them was cut off, Mr. Hay declared that the policy of the United States would be "to seek a solution which may bring about permanent safety and peace to China, preserve China's territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire." The United States co-operated with the other foreign powers in the military expedition for the relief of the legations;

united in the joint demands of December 22, 1900, for the punishment of the principal offenders, the indemnification of the foreign governments and their citizens, and the adoption of measures to assure the preservation of order and the improvement of relations, both commercial and diplomatic; and signed the final protocol of September 7, 1901, by which an indemnity of about $330,000,000 was assessed upon China. In all these matters the United States had sought to exert a moderating influence; and six years later it returned to China the unexpended remainder, about one-half, of the sum of $24,000,000 allotted to American claims.

Meanwhile, a complicated and elusive negotiation took place in regard to Manchuria, whose evacuation by Russia the United States continued to urge. On January 16, 1904, however, Japan presented to Russia an ultimatum, embracing the preservation of Chinese sovereignty in Manchuria and the exclusion of Korea from the Russian sphere of interest. In the war that ensued the United States, while maintaining its neutrality, expressed to the belligerents the wish that the area of hostilities might as far as possible be localized. They assented except as to Manchuria, which was indeed the principal theatre of military operations. In June, 1905, they accepted a proposal of peace negotiations, which President Roosevelt is said to have made to Russia at the instance of Japan; and on September 5, 1905, they concluded at Portsmouth, New Hampshire, a treaty

by which Manchuria, except the Liaotung peninsula, was to be restored to China, while Port Arthur, Talienwan, and the adjacent territories which had been leased to Russia were, with China's consent, to be transferred to Japan.

While the fate of Manchuria was under discussion at Portsmouth a serious agitation against the United States broke out in China. The treaty of 1880, while assenting to the exclusion from the United States of Chinese "laborers," expressly provided for the admission of teachers, students, merchants, and travellers. The statutes subsequently adopted conformed to these stipulations, but in 1898 their application was broadened by a ruling, contrary to previous opinion and practice, that all persons, such as salesmen, clerks, buyers, storekeepers, and physicians, who were not expressly exempted, were excluded as "laborers." Moreover, the law was often enforced in a harsh and truculent manner, so that eventually a boycott of American goods was undertaken in northern China under the auspices of local guilds and chambers of commerce. Extensive losses were sustained by American merchants before the Chinese government could stay the movement.

In November, 1909, coincidently with efforts to extend American industrial and financial interests in China, especially in connection with the building of railways, the United States, with a view to preserve "the undisputed enjoyment by China of all political rights in Manchuria" as well as the "open door,"

proposed to the powers the "commercial neutralization" of the Manchurian railways under an international administration. Russia declined to accept the plan, on the ground that it would "seriously injure Russian interests, public and private"; while her former antagonist, Japan, rejected it as involving an important departure from the terms of the treaty of Portsmouth, under which the Japanese and Russian railways in Manchuria were "dedicated exclusively to commercial and industrial uses," as well as the setting up in that part of China of an exceptional system whose operation would not be beneficial.

In October, 1911, an insurrection against the Imperial government broke out in China. In February, 1912, the Manchu Dynasty abdicated, and Yuan Shih Kai, who had held many high governmental positions, military and civil, was elected provisional President of the Republic of China, by a national assembly at Nanking. A provisional constitution was adopted. The United States Senate passed a resolution, which had come from the House, congratulating the people of China on their adoption of a republican form of government. On February 3d Mr. Knox, as Secretary of State, replying to an inquiry of the German government, had reiterated the desire of the United States to preserve China's territorial integrity as well as to secure the observance of the principle of neutrality, which he proposed to extend to loans. After the 4th of March, 1913, the bankers forming the American group in the "six-

power" loan (about $125,000,000) then contemplated under the auspices of the United States, France, Germany, Great Britain, Japan, and Russia, asked their government whether it would request them to participate. On March 19th President Wilson publicly announced that the administration had declined to make the request, because it did not approve either the "conditions of the loan," which touched "very nearly the administrative independence of China," or "the implications of responsibility," which "might conceivably go the length in some unhappy contingency of forcible interference in the financial, and even the political, affairs" of the country. In the following May the United States formally recognized the republic.

In the recent controversies between China[1] and

[1] By chance, as the result of the mechanical adjustment of the new matter to the plates of the original work, we are enabled to insert, at the last moment, the agreement between the United States and Japan concluded at Washington on November 2, 1917, by exchange of notes between Mr. Lansing, Secretary of State, and Viscount Ishii, head of the Japanese special mission, on the subject of China. Referring to "recent conversations touching the questions of mutual interest" to their governments relating to China, and stating that, in order to "silence mischievous reports," a "public announcement once more of the desires and intentions shared" by those governments on the subject is believed to be advisable, Mr. Lansing, in his note, declares that the two governments "recognize that territorial propinquity creates special relations between countries, and consequently" that "the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous." He then observes that "the territorial sovereignty of China, nevertheless, remains unimpaired," and that the United States "has every confidence in the repeated assurances" of Japan that, while "geo-

Japan the United States does not appear to have become directly involved. The prestige of Japan in that quarter has, however, been visibly enhanced; and a spontaneous communication lately made by Washington to Peking, upon the importance of maintaining internal political unity, seems to have occasioned some annoyance at Tokyo, whose first impressions may have been formed upon incomplete advices. Possibly the powers of the eminent Japanese commission now on its way (July, 1917) to the United States may be broad enough to admit of a discussion of the situation in China.

When Edmund Roberts was dispatched to the Far

graphical position" gives her such "special interests," she has "no desire to discriminate against the trade of other nations or to disregard the commercial rights heretofore granted by China in treaties with other powers"; that the two governments "deny that they have any purpose to infringe in any way the independence or territorial integrity of China"; that they "declare furthermore that they always adhere to the principle of the so-called 'open door,' or equal opportunity for commerce and industry in China"; and that they "mutually declare that they are opposed to the acquisition by any other government of any special rights or privileges that would affect the independence or territorial integrity of China, or that would deny to the subjects or citizens of any country the full enjoyment of equal opportunity" in such "commerce and industry." Viscount Ishii, repeating the terms of Mr. Lansing's note, confirms, under the authorization of his government, the "understanding" thus reached.

The Chinese government, when promptly furnished by Japan with copies of these notes, lodged at Washington and at Tokyo a declaration to the effect that China, having adopted toward friendly nations the principle of justice, equality, and respect for treaty rights, and recognizing special relations created by territorial propinquity only so far as expressed in treaties, would not permit herself to be bound by any agreement made between other nations,

East, he was directed to obtain information respecting Japan and the value of its trade with the Dutch and the Chinese. Japan, like China, had been closed to intercourse with the Western powers in the seventeenth century, chiefly on account of foreign aggressions. The seclusion of Japan was, however, even more complete than that of China, since the only privilege of trade conceded to any Western power was that granted to the Dutch, who maintained a factory on the island of Deshima, at Nagasaki, and who were allowed to fit out two ships a year from Batavia to that port. In 1845 Alexander Everett, when he went as commissioner to China, took with him a full power to negotiate a treaty with Japan. This power he afterwards transferred to Commodore James Biddle, who in 1846 paid an ill-fated visit to the bay of Yedo. In 1849 Commander Glynn, of the United States navy, while stationed in the western Pacific, made a voyage in the *Preble* to Nagasaki to inquire as to the fate of certain American whalers, said to have been shipwrecked, who were reported to be held as prisoners by the Japanese. Commander Glynn found that the men were in reality deserters, but he obtained their release; and on his return to the United States he urged that another effort be made to open an intercourse between the two countries, especially with a view to the use of a Japanese port for the accommodation of a line of steamers which was then

expected to be established between California and China. On June 10, 1851, Commodore Aulick was instructed to proceed to Yedo in his flag-ship, accompanied by as many vessels of his squadron as might be conveniently employed. His health, however, soon afterwards became impaired, and he was relieved of the mission. His powers were then transferred to Commodore Matthew C. Perry, by whom elaborate preparations were made for the expedition.

On the afternoon of Friday, July 8, 1853, Perry, in command of a squadron of four vessels, anchored in the bay of Yedo. His proceedings were characterized by energy and decision. He had, as he said, determined to demand as a right and not to solicit as a favor those acts of courtesy which are due from one civilized nation to another, and to allow none of the petty annoyances that had been unspairingly visited on those who had preceded him. He declined to deliver his credentials to any but an officer of the highest rank. When he was asked to go to Nagasaki, he refused; when ordered to leave the bay, he moved higher up; and he found that the nearer he approached the imperial city "the more polite and friendly they became." After delivering his letters to two princes designated by the Emperor to receive them, he went away, announcing that he would return in the following spring to receive a reply to his propositions. He

returned with redoubled forces in February, 1854, and, passing by the city of Uraga, anchored not far below Yedo. The Emperor had appointed commissioners to treat with him, four of whom were princes of the empire. They desired him to return to Uraga, but he declined to do so. The commissioners then consented to treat at a place opposite the ships. Here the Japanese erected a pavilion, and on March 8th Perry landed in state, with an escort of five hundred officers, seamen, and marines, embarked in twenty-seven barges. "With people of forms," said Perry, "it is necessary either to set all ceremony aside, or to out-Herod Herod in assumed personal consequence and ostentation. I have adopted the two extremes." Perry submitted a draught of a treaty; and, pending the negotiations, he established a telegraph-line on shore, and laid down and put in operation a railway with a locomotive and cars, "carrying around the circle many of the astonished natives." A treaty was signed on March 31, 1854. American ships were allowed to obtain provisions and coal and other necessary supplies at Simoda and Hakodate, and aid and protection in case of shipwreck were promised. No provision for commercial intercourse was secured, but the privilege was obtained of appointing a consul to reside at Simoda. Such was the first opening of Japan, after two centuries of seclusion. On July 17, 1901, there was unveiled at Kurihama, a monument in com-

memoration of Perry's advent. In Japan his name is to-day a household word, and is better known than that of any other foreigner.

On September 8, 1855, the government of the United States, availing itself of the privilege secured by the Perry treaty, appointed Townsend Harris as consul-general to reside at Simoda. He was chosen in the hope that by reason of his knowledge of Eastern character and his general intelligence and experience in business, he might be able to induce the Japanese to enter into a treaty of commerce. On July 29, 1858, his efforts were crowned with success. A provision for diplomatic representation at Yedo was obtained; rights of residence and of trade at certain ports were secured; duties were regulated; the privilege of extraterritoriality was granted to Americans in Japan; and religious freedom in that country was promised. Harris's triumph was won by a firm, tactful, honest diplomacy, and without the aid of a fleet, though it was no doubt true that he invoked the then recent humiliation of China by the European allies as an argument in favor of a voluntary intercourse. Before the end of the year, the fleets of the allies appeared in Japanese waters, and treaties similar to that of the United States were obtained by France and Great Britain. Treaties between Japan and other powers followed in due time. Harris's treaty provided for the exchange of ratifications at Washington. For this purpose the Japanese

government sent a special embassy to the United States. Including servants, it comprised seventy-one persons. They were conveyed to America in a United States man-of-war, and Congress provided for their expenses. The ratifications of the treaty were exchanged at Washington on May 22, 1860, and the members of the embassy were afterwards conducted to some of the principal American cities. They were sent back to Japan on the man-of-war *Niagara*. To the shallow and sectarian reasoner, the Japan of to-day, once more possessed of full judicial and economic autonomy, and in the potent exercise of all the rights of sovereignty, presents an astounding spectacle of sudden, if not miraculous development; but in reality Japan is an ancient and polished nation, the roots of whose civilization, though its outward forms may have changed, strike deep into the past.

During the Russo-Japanese war the relations of the United States with Japan continued to be of the friendliest character. Popular subscriptions to Japanese war loans were made with an enthusiasm which purchasers sometimes refused to ascribe solely to the expectation of profit. The American public was therefore startled when, in the autumn of 1906, there arose a sudden diplomatic crisis, occasioned by the action of the San Francisco board of education in passing an ordinance by which Chinese, Japanese, and Korean children were required to be segregated together in an Oriental school. President Roosevelt,

in his annual message of December 3, 1906, strongly reprobated this measure, and it was afterwards essentially modified. In reality, the incident was one of the results of an active agitation in California for the exclusion of Japanese laborers. This agitation the two governments, acting in a spirit of co-operation, dealt with by means of a friendly informal understanding. Japan, while permitting her laborers to emigrate to Hawaii, Canada, and Mexico, had adopted the policy of refusing to provide them with passports for the United States. This course she continued to follow. Congress, on the other hand, by the Immigration Act of February 20, 1907, authorized the President to exclude from the continental territory of the United States persons having passports for the insular possessions, for the Canal Zone, or for another country. By an executive order of March 14, 1907, this power was duly exercised.

In 1913 relations again became strained as the result of steps taken in the California legislature to prohibit certain classes of aliens, including Japanese, from holding lands in that State. President Wilson deemed the occasion to be of sufficient importance to justify the sending of the Secretary of State, Mr. Bryan, to California to confer with the governor and the legislature. The bill, though eventually passed, was materially modified. As approved on May 19, 1913, it permitted aliens, unless they were "eligible to citizenship" of the United States, to own and transmit real property only so far as the right

was secured by treaty, except that they might lease agricultural lands for a term not exceeding three years. As Japanese are among the classes of aliens for whose naturalization the federal laws have been held not to provide, the statute curtailed the local rights as to land-ownership which they had previously enjoyed. Japan protested against the act as involving a racial discrimination. The United States, while contending that it reflected local economic competition rather than racial discrimination, maintained that it preserved all rights under the treaty of 1911 and, in permitting agricultural leases, even went beyond them. The Japanese government, however, declined to accept these explanations as satisfactory, declaring that it regarded the act as involving an "unjust and obnoxious discrimination," and that it could not regard the question as closed "so long as the existing state of things was permitted to continue."

The situation in the Far East has beyond a doubt been profoundly affected by the Anglo-Japanese alliance, which has been twice renewed, with amendments.

By the first alliance, which was signed at London January 20, 1902, the contracting parties, declaring that they were actuated solely by the desire to maintain the *status quo* and general peace in the Far East, but that they were also specially interested in maintaining the independence and territorial integrity of China and Korea and in securing equal oppor-

tunities in those countries for the commerce and industry of all nations, agreed that if either party should, in defence of its interests in those countries, become involved in war with another power, the other party would maintain a strict neutrality and use its efforts to prevent any other power from taking part in hostilities against its ally, but that if these efforts were not successful it would at once come to its ally's assistance and make war and peace in common with it.

This agreement was replaced by the treaty of August 12, 1905, the objects of which were declared to be (*a*) the consolidation and maintenance of the general peace in the regions of eastern Asia and of India; (*b*) the preservation of the common interests of all the powers in China by insuring the independence and integrity of the Chinese Empire and the principle of equal opportunity for their commerce and (*c*) the maintenance of the territorial rights of the high contracting parties in the regions of eastern Asia and of India and the defence of their special interests in those regions. To this end they agreed that if by reason of unprovoked attack or aggressive action by any other power either party should be involved in war in defence of such territorial rights or special interests the other party would come to its assistance and conduct the war and make peace in common with it. Great Britain then explicitly recognized the paramount political, military, and economic interests of Japan in Korea, while Japan

reciprocally recognized Great Britain's special interests in all that concerned the security of the Indian frontier. As regarded the war then in progress between Japan and Russia, it was, however, agreed that Great Britain would continue to maintain a strict neutrality unless some other power should join in hostilities against Japan.

The foregoing treaty was replaced with a new alliance signed at London July 13, 1911. The same general objects are professed as in the treaty of 1905, but it is stated that "important changes" have taken place since that time. This phrase no doubt embraced the absorption of Korea, where Japan's "paramount interests," which are no longer mentioned, had ripened into territorial rights. And as regarded the "territorial rights" or "special interests" of the allies in eastern Asia and in India, their obligation to aid each other in war in defence of such rights or interests was now declared to become effective upon "unprovoked attack" or "aggressive action" by any power "wherever arising." This obligation was potentially qualified by a stipulation to the effect that, "should either . . . party conclude a treaty of general arbitration with a third power," it should not be obliged to go to war with the power with which such treaty was "in force." This clause is understood to have been intended to refer to a treaty of general arbitration between the United States, on the one part, and Great Britain and France, respectively, on the other, concluded in Au-

gust, 1911, which was in process of negotiation when the alliance was signed; but, as this treaty never came into force, the scope of the alliance did not prove to be affected by it.

Korea, the Land of the Morning Calm, continued, long after the opening of China and Japan, to maintain a rigorous seclusion. Efforts to secure access had invariably ended in disaster. On May 20, 1882, however, Commodore Shufeldt, U. S. N., invested with diplomatic powers, succeeded, with the friendly good offices of Li Hung-Chang, in concluding with the Hermit Kingdom the first treaty made by it with a Western power. The last great barrier of national non-intercourse was broken down.

The results that followed were unforeseen. Beset by the rival pretensions of China and Japan to suzerainty, Korea, leading a feeble and uncertain existence, formed the immediate occasion of the war between those countries in 1894. At the end of this war China relinquished her claims, but France, Germany, and Russia intervened to stay the hand of Japan. Subsequently, the Korean government made to eminent Russians large timber concessions on the Yalu River. It was chiefly these concessions, which were regarded as exposing Korea to Russian domination, that precipitated the war between Russia and Japan of 1904.

Immediately after the peace of Portsmouth Japan proceeded formally to absorb Korea. The direction of Korean external relations was taken over by the

Japanese Foreign Office; and on November 24, 1905, Mr. Root, as Secretary of State, informed the minister of the United States at Seoul that the diplomatic representation of matters affecting American persons, property, and treaty rights was transferred to the American legation at Tokyo, and directed him to return home. Korea as an independent state ceased to exist.

References:

As to "Reciprocity" and the Abolition of Discriminating Duties, see

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VI

NON-INTERVENTION AND THE MONROE DOCTRINE

AMONG the rules of conduct prescribed for the United States by the statesmen who formulated its foreign policy, none was conceived to be more fundamental or more distinctively American than that which forbade intervention in the political affairs of other nations. The right of the government to intervene for the protection of its citizens in foreign lands and on the high seas never was doubted; nor was such action withheld in proper cases. But, warned by the spectacle of the great European struggles that had marked the attempts of nations to control one another's political destiny, the statesmen of America, believing that they had a different mission to perform, planted themselves upon the principle of the equality of nations as expounded by Grotius and other masters of international law. This principle was expressed with peculiar felicity and force by Vattel, who declared that nations inherited from nature "the same obligations and rights," that power or weakness could not in this respect produce any difference, and that a "small

republic" was "no less a sovereign state than the most powerful kingdom." The same thought was tersely phrased by Chief-Justice Marshall, in his celebrated affirmation: "No principle is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights." And as the Declaration of Independence proclaimed life, liberty, and the pursuit of happiness to be "inalienable rights" of individual men, so the founders of the American republic ascribed the same rights to men in their aggregate political capacity as independent nations.

While the principle of non-intervention formed an integral part of the political philosophy of American statesmen, its practical importance was profoundly impressed upon them by the narrowness of their escape from being drawn, by the alliance with France, into the vortex of the European conflicts that grew out of the French Revolution. Even before American independence was acknowledged by Great Britain, American statesmen scented the dangers that lurked in a possible implication in European broils. "You are afraid," said Richard Oswald to John Adams, "of being made the tool of the powers of Europe." "Indeed, I am," said Adams. "What powers?" inquired Oswald. "All of them," replied Adams; "it is obvious that all the powers of Europe will be continually manœuvring with us to work us into their real or imaginary bal-

ances of power. . . . But I think that it ought to be our rule not to meddle." In 1793, the revolutionary government of France, apparently doubting the applicability of the existing alliance with the United States to the situation in Europe, submitted a proposal for "a national agreement, in which two great peoples shall suspend their commercial and political interests and establish a mutual understanding to defend the empire of liberty, wherever it can be embraced." This proposal the American government declined; and its response found practical embodiment in its acts. The reasons for the policy of non-intervention and neutrality, to which the administration of the time so sedulously adhered, were eloquently summed up by Washington in that immortal political legacy, his Farewell Address. "The great rule of conduct for us, in regard to foreign nations," said Washington, "is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop." The same thought was conveyed by Jefferson, in his first inaugural address, in the apothegm— "Peace, commerce, and honest friendship with all nations, entangling alliances with none."

The policy of non-intervention embraced matters of religion as well as of politics. By the first amendment to the Constitution of the United States, Con-

gress was expressly forbidden to make any law "respecting an establishment of religion, or prohibiting the free exercise thereof." This inhibition against governmental interference with religious opinions and practices was in its spirit extended to the intercourse of the United States with foreign nations. In Article ix. of the treaty between the United States and Tripoli, which was concluded on November 4, 1796, during the administration of Washington, we find this significant declaration: "As the Government of the United States of America is not in any sense founded on the Christian Religion; as it has in itself no character of enmity against the laws, religion, or tranquillity of Mussulmen, . . . it is declared by the parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries." With the omission of the introductory phrase, a similar declaration was inserted in the treaty with Tripoli of 1805, and in the treaties with Algiers of 1815 and 1816. A stipulation less broad in its tolerance appears in Article xxix. of the treaty between the United States and China, signed at Tientsin, June 18, 1858. This article, after reciting that the principles of the Christian religion are "recognized as teaching men to do good, and to do to others as they would have others do to them," provides that "any person, whether citizen of the United States or Chinese convert, who, ac-

cording to these tenets, peaceably teach and practice the principles of Christianity, shall in no case be interfered with or molested." By Article iv., however, of the Burlingame treaty of 1868, this stipulation is mentioned as an introduction to the declaration that it is "further agreed that citizens of the United States in China of every religious persuasion, and Chinese subjects in the United States, shall enjoy entire liberty of conscience, and shall be exempt from all disability or persecution on account of their religious faith or worship in either country." In harmony with this principle was the simple declaration in the treaty with Siam of 1856, and in the treaty with Japan of 1858, that Americans in those countries should "be allowed the free exercise of their religion." They were to be protected, not as the adherents or the propagandists of any particular faith, but as American citizens. As was well said by Mr. Cass, it was the object of the United States "not merely to protect a Catholic in a Protestant country, a Protestant in a Catholic country, a Jew in a Christian country, but an American in all countries."

The policy of non-intervention, which guided the United States during the wars growing out of the French Revolution, was severely tested in the struggle of the Spanish colonies in America for independence; but, under the guardian care of Monroe and John Quincy Adams, it was scrupulously adhered

to. In view of this circumstance, it is strange that one of the gravest perils by which, after the days of the alliance with France, the maintenance of the policy was ever apparently threatened should have grown out of a political contest in Europe. The struggle of the Greeks for independence evoked much sympathy in America as well as in England; but the struggle of the Hungarians, under the leadership of Kossuth, for emancipation from Austrian rule, gave rise in the United States to manifestations of feeling that were unprecedented. The Hungarian revolution came at a time when the spirit of democracy, which distinguishes the political and social development of the nineteenth century, was especially active; but the wide-spread interest felt in the United States in the Hungarian movement was greatly intensified by reason of the popular assumption that the declaration of Hungary's independence, although it in reality left the question of a permanent form of government wholly in abeyance, was the forerunner of a republic. It was, however, only after the arrival of Kossuth in the United States that the excitement reached its greatest height. In June, 1849, Mr. A. Dudley Mann was appointed by the President as a "special and confidential agent of the United States to Hungary"; but, before he reached his destination, Russia had intervened in aid of Austria, and the revolution had practically come to an end. When the revolution

was crushed, Kossuth and many of his associates sought refuge in Turkey. By a joint resolution of Congress of March 3, 1851, the President was requested, if it should be the wish of these exiles to "emigrate" to the United States, to authorize the employment of a public vessel to convey them to America. In conformity with this request the U.S.S. *Mississippi* was sent to the Dardanelles; but the exiles had scarcely embarked, when it was found that Kossuth had other views than that of coming to America as an emigrant. At Gibraltar he left the *Mississippi* and proceeded to London, for the purpose of conferring with revolutionary exiles in that city; and he afterwards sailed for America in the steamer *Humboldt*, from Southampton. He arrived at New York on the night of December 14, 1851, after a stormy passage. He soon dissipated all doubts as to the objects of his mission. In his public addresses he cast off all reserve, and in his "official capacity" as the representative of Hungary made an appeal for aid. He affirmed that the consideration of distance should not deter the United States in the case of Hungary any more than in that of Cuba from interfering against European invasion. Cuba was six days' distant from New York; Hungary was eighteen. Was this, he asked, a circumstance to regulate the conduct and policy of a great people? The people, wherever he went, seemed enthusiastically to give a negative answer. His

journey to Washington was in the nature of a triumphal progress. When presented to the President, he made a direct appeal for intervention. President Fillmore, with courtesy and dignity, but with equal candor, repelled the solicitation. But, for his disappointment at the White House, Kossuth found consolation in his reception by Congress, though it in the end proved to be wholly illusory. He was received both by the Senate and by the House, and was banqueted by Congress. The first effective check to the popular excitement was given by Henry Clay, who refused to countenance the prevailing agitation. Kossuth more than once expressed a desire to meet him, and Clay, though in feeble health, at length granted him an interview. "For the sake of my country," said Clay, addressing Kossuth, "you must allow me to protest against the policy you propose to her." "Waiving the grave and momentous question of the right of one nation to assume the executive power among nations, for the enforcement of international law," Clay pointed out the practical difficulties that stood in the way of affording to Hungary effective aid against Austria and Russia. He also enlarged upon the evil example that would be afforded by the United States to other powers in departing from its "ancient policy of amity and non-intervention"; and, after declaring that the United States had, by adhering to that policy, "done more for the cause of liberty

in the world than arms could effect," he concluded: "Far better is it for ourselves, for Hungary, and for the cause of liberty, that, adhering to our wise pacific system and avoiding the distant wars of Europe, we should keep our lamp burning brightly on this Western shore, as a light to all nations, than to hazard its utter extinction, amid the ruins of fallen or falling republics in Europe." The Kossuth danger passed away even more suddenly than it had arisen. After he left Washington, he addressed a letter to the presiding officers of the two houses of Congress, in which he expressed the hope that the United States would pronounce in favor of the law of nations and of international rights and duties. A motion to print this letter was carried in the Senate by only one vote, and the arguments in support of the motion were almost exclusively confined to considerations of courtesy. Indeed, the sudden collapse of Kossuth enthusiasm in high places, after his departure from the capital, would have been inexplicable if the open opponents of his policy of intervention had found any one to meet them on that ground.

It may be said that the most pronounced exception ever made by the United States, apart from cases arising under the Monroe Doctrine, to its policy of non-intervention, is that which was made in the case of Cuba. At various times, since the United States became an independent nation, con-

ditions in Cuba had been such as to invite interference either for the purpose of correcting disorders which existed there, or for the purpose of preventing Cuba from falling a prey to some of Spain's European enemies. During the Ten Years' War in Cuba, from 1868 till 1878, intervention by the United States was prevented on several occasions only by the powerful influence of President Grant, counselled and supported by his Secretary of State, Hamilton Fish. In its abstention, the administration was aided by the situation at home, which afforded daily admonition of the difficulties that might attend the re-establishment of order in a large and populous island where the process of emancipation was still going on. In 1895 the situation was changed in the United States as well as in Cuba. American interests in the island had also increased. The second insurrection was, besides, more active than the first, and spread over a wider area. If the conflict were left to take its course, the ruin of the island was apparently assured. The United States tendered its good offices; but the offer was not productive of any tangible result. In his annual message of December 7, 1896, President Cleveland declared that, when Spain's inability to suppress the insurrection had become manifest, and the struggle had degenerated into a hopeless strife involving useless sacrifice of life and the destruction of the very subject-matter of the

conflict, a situation would be presented in which the obligation to recognize the sovereignty of Spain would be "superseded by higher obligations." Conditions continued to grow worse. The distress produced by the measures of concentration, under the rule of General Weyler, excited strong feeling in the United States, and prompted President McKinley to request Spain to put an end to existing conditions and restore order. General Weyler was afterwards succeeded by General Blanco, and it was announced that an autonomous régime would be instituted. But neither the offer of autonomy nor the actual institution of an autonomous government produced peace. The insurgents, embittered by the three years' conflict, rejected the programme of autonomy with substantial unanimity, while the distinctively Spanish element of the population viewed it with disapprobation and withdrew from politics. In this delicate situation the intervention of the United States was precipitated by certain startling events. The incident created by the surreptitious publication of the letter of Señor Dupuy de Lome, Spanish minister at Washington, to Señor Canalejas, in which President McKinley was aspersed and the reciprocity negotiations between the two countries were exhibited as a sham, had just been officially declared to be closed, when the U. S. S. *Maine* was blown up at Havana, and two hundred and sixty-six of her crew perished. Superficial

reasoners have wished to treat the destruction of the *Maine* as the justification and the cause of the intervention of the United States. The government of the United States, however, did not itself take that ground. It is true that the case of the *Maine* is mentioned in the preamble to the joint resolution of Congress, by which the intervention of the United States was authorized; but it is recited merely as the culmination of "abhorrent conditions," which had existed for more than three years. The destruction of the *Maine* doubtless kindled the intense popular feeling without which wars are seldom entered upon; but the government of the United States never charged—on the contrary, it refrained from charging—that the catastrophe was to be attributed to "the direct act of a Spanish official." Its intervention rested upon the ground that there existed in Cuba conditions so injurious to the United States, as a neighboring nation, that they could no longer be endured. Its action was analogous to what is known in private law as the abatement of a nuisance. On this ground the intervention was justified by the late Alphonse Rivier, one of the most eminent publicists in Europe, and on this ground its justification must continue to rest.

Any exposition of the American doctrine of non-intervention would be incomplete that failed specially to notice the rule of the United States with

regard to the recognition of new governments—a rule which is indeed a corollary of that doctrine. In Europe, governments had been treated as legitimate or illegitimate, according to what was conceived to be the regularity or the irregularity of the succession of their rulers. The attitude of the United States on this question was early defined, when the National Convention in France proclaimed a republic. On that occasion Jefferson, as Secretary of State, in a letter to Gouverneur Morris, of March 12, 1793, which has become a classic, said: "We surely cannot deny to any nation that right whereon our own government is founded, that everyone may govern itself according to whatever form it pleases, and change these forms at its own will; and that it may transact its business with foreign nations through whatever organ it thinks proper, whether king, convention, assembly, committee, president, or anything else it may choose. The will of the nation is the only thing essential to be regarded." In a word, the United States maintained that the true test of a government's title to recognition is not the theoretical legitimacy of its origin, but the fact of its existence as the apparent exponent of the popular will. And from this principle, which is now universally accepted, it necessarily follows that recognition can regularly be accorded only when the new government has demonstrated its ability to exist. Recognition extended

at an earlier stage of the revolution savors of an act of intervention, and as such must be defended on its merits, as is clearly set forth in President Roosevelt's message of January 4, 1904, in relation to the recognition of the Republic of Panama. Conversely, to refuse recognition of an actually established government merely because of its form, or the non-constitutional or revolutionary character of its origin or antecedents, also savors of intervention. Thus the United States, in 1848, in approving the act of its minister at Paris in promptly recognizing the short-lived republican government then suddenly set up in France, said:

"In its intercourse with foreign nations the government of the United States has, from its origin, always recognized *de facto* governments. We recognize the right of all nations to create and re-form their political institutions according to their own will and pleasure. We do not go behind the existing government to involve ourselves in the question of legitimacy. It is sufficient for us to know that a government exists capable of maintaining itself; and then its recognition on our part inevitably follows. This principle of action, resulting from our sacred regard for the independence of nations, has occasioned some strange anomalies in our history. The Pope, the Emperor of Russia, and President Jackson were the only authorities on earth which ever recognized Dom Miguel as King of Portugal."

In the case of the so-called Rivas-Walker govern-

ment, set up in Nicaragua in 1855 by William Walker in conjunction with a Nicaraguan citizen, Don Patricio Rivas, who was styled provisory president of the republic, unusual complications were presented. Not only was the revolution initiated by Walker at the head of a filibustering expedition from the United States, but there were doubts as to the character and stability of the foundations on which the government claimed to rest. When, therefore, a person appeared in Washington in December, 1855, with credentials as minister plenipotentiary from Rivas, the United States declined to receive him, and instructed its minister in Nicaragua to report upon the situation there, some of the accounts representing that the existing political "organization" was "satisfactory to the people," while others indicated that the people would "shake off the power of Walker if it were possible for them to do so." The reports of the minister were favorable to the "organization," and in May, 1856, a new minister from it was duly received. The recognition was, however, a few months later withdrawn, and the further consideration of its renewal was soon rendered unnecessary by the suppression of the Walker-Rivas power by the Nicaraguans, aided by Costa Rica.

During and after the Civil War the United States not unnaturally practised greater deliberation than it had sometimes done before in recognizing revolutionary governments in other countries. Indeed, Mr. Seward, as Secretary of State, once went so far

as to instruct the minister of the United States in Bolivia not to recognize any government which "was not adopted through the free will and the constitutionally expressed voice of the people." He also informed the minister of the United States in Peru that "revolutions in republican states ought not to be accepted until the people have adopted them by organic law with the solemnities which would seem sufficient to guarantee their stability and permanency." Subsequently, however, he explained that, far from denying the right of a nation to change its republican constitution by force, the United States, when a change was so made, merely required, before recognizing the new administration, that it should be "sanctioned by the formal acquiescence and acceptance of the people." In the case of Bolivia, he had already found it expedient to "recognize the actual government," if it had become "truly and in fact consolidated." In no instance was it assumed that, in the concession or withholdment of recognition, there was involved the right to prescribe or control the course of political action in other countries. In the main the chief object of solicitude appeared to be the probable stability of the new authority, as indicated by its popular acceptance, of which the substantial cessation of armed opposition was treated as cogent proof. In the case of the Diaz revolutionary government in Mexico, in 1876, formal recognition was deferred for almost a year after recognition had been accorded by the

other American and the European governments then represented at the Mexican capital. The reason of the delay, as explained by President Hayes in his annual message of December 3, 1877, was, however, "the occurrences on the Rio Grande border," which, together with the non-payment of certain sums due under the claims convention of 1868, created doubts as to the ability and disposition of the new government to fulfil the "obligations of treaties" and perform the duties of "international friendship." It was not suggested that other tests, such as that of constitutional regularity, might be applied, although the new government, which was in fact eventually recognized, was confessedly the result of an armed revolution. On the contrary, apart from the special considerations of an international character above noted, the attitude of the United States, then and thereafter maintained, is well expressed by the formula employed, for instance, in the case of the revolutionary government of General Crespo in Venezuela in 1892, when the American minister at Caracas was instructed to recognize it if it was "accepted by the people, in possession of the power of the nation, and fully established."

In 1913 the policy of the United States entered upon a somewhat distinct phase when, on the 12th of March, President Wilson issued a statement as to Latin America. This statement, which was sent to all the diplomatic officers of the United States in those countries, was also given to the public. "To

cultivate the friendship and deserve the confidence of our sister republics of Central and South America, and to promote . . . the interests which are common to the people of the two continents," President Wilson declared to be one of the chief objects of his administration. While he earnestly desired "the most cordial understanding and co-operation between the peoples and leaders of America," co-operation was, he said, possible "only when supported at every turn by the orderly processes of just government" based "not upon arbitrary or irregular force," but upon "law," upon the "consent of the governed," and upon "the public conscience and approval." Having no sympathy with those "who seek to s ize the power of government to advance their personal interests or ambition," we should, he said, as friends, "prefer those who act in the interest of peace and honor, who protect private rights and respect the restraints of constitutional provision."

Upon this statement adverse comments were made by various South American journals, which professed to detect in it not only a tone of admonition, but also an assumption that irregular political conditions marked the countries of Central and South America as a group. It is altogether probable, however, that the country uppermost in the President's thoughts at the moment was Mexico. Some months later the government of Peru was suddenly overthrown and its chief executive seized and imprisoned. The explanation given of this violent change was

that the kidnapped President, Señor Billinghurst, had been acting "unconstitutionally." The *junta* by which the transformation was brought about was recognized by the United States with a promptitude not incompatible with a rigorous application of the *de facto* principle. But, from the point of view of a policy designed to discourage irregular political action in foreign countries by refusing to countenance those who seek power by it, the case must be regarded as exceptional. What may be regarded as an application of the new policy was then in process of development in Mexico, where revolutionary conditions had again come to prevail.

When, on December 1, 1910, Porfirio Diaz was inaugurated as President for an eighth term of four years, strong discontent was manifested against the continuance of his rule. An insurrectionary provisional government was set up in the State of Chihuahua, under the presidency of Francisco Madero, who demanded Diaz's retirement, "honest elections" and new land laws. The revolt spread to the neighboring States of Sonora, Coahuila, and Durango, while disturbances occurred in Lower California and in Yucatan. Concessions and promises of further concessions proved to be unavailing. Madero continued to demand Diaz's resignation. On April 23, 1911, under apprehension of intervention by the United States, an armistice was concluded; and on May 18th, after a renewal of fighting, peace was proclaimed on the basis of the resig-

nation of the President and Vice-President, and the designation of Señor Francisco de la Barra as President *ad interim*, with a cabinet to be selected in consultation with Madero. A "free election" was to be held within six months. The election was held on October 15th. Francisco Madero was "unanimously" chosen as President and Pino Suarez as Vice-President by a total popular vote of somewhat more than twenty thousand, but order was not fully re-established. Zapata continued active in the State of Morelos, and uprisings occurred in the north. In the city of Juarez, Emilio Vasquez Gomez was proclaimed as President, and in the following year General Orozco, governor of Chihuahua, "pronounced" for him and took command of his forces. In order to prevent the giving of aid to the enemies of the government at the City of Mexico the Congress of the United States adopted a joint resolution empowering the President to stop the exportation of arms and munitions of war. President Taft approved this resolution on March 14, 1912, and on the same day put it into effect. The export of military supplies for the Mexican government continued to be lawful.

The government of Madero became more and more insecure. On February 8, 1913, General Victoriano Huerta, commander-in-chief of its forces, went over to its enemies. Generals Reyes and Felix Diaz, whom Madero had imprisoned, were released, and a new revolt was declared. Fighting in the city

ensued, in which General Reyes was killed. Madero and Pino Suarez were arrested and forced to resign. A few days later they were shot and killed. By Article 85 of the Mexican Constitution a vacancy in the presidency is filled by the members of the cabinet in a specified legal succession. When Madero resigned, Pedro Lascurain, Minister of Foreign Affairs, became provisional President, and appointed General Huerta Minister of the Interior. Lascurain then resigned, and, his resignation being accepted by the Congress, Huerta, by virtue of his cabinet position, became provisional President. The American ambassador, Henry Lane Wilson, as dean of the diplomatic corps, congratulated him on his accession, and he was later formally recognized by the European powers and by some of the American. The United States withheld its recognition, and received the concurrence of Argentina, Brazil, Chile, and certain other governments.

Meanwhile a revolt was begun in the north by Venustiano Carranza, governor of the State of Coahuila, who, on March 26, 1913, proclaimed the "Plan of Guadalupe," which was signed by sixty-four officers of the Coahuila military forces. After reciting that Huerta, by arresting Madero and Pino Suarez and forcing them to resign, had been guilty of treasonable acts which the legislative and judicial powers of the country, as well as various governors of States, had recognized and protected, the proclamation repudiated all those officials and named

Venustiano Carranza as first chief of the Constitutionalist Army and depositary of the executive power when that army should occupy the City of Mexico.

As the Constitutionalists extended their operations in northern Mexico numerous leaders of armed bands joined their standard. Among these was Francisco Villa, who quickly attained the leading place among their military chieftains. Although he probably never followed Carranza in the sense of actually recognizing his authority, there was no doubt as to his fighting instincts or as to his ability to attract the peon class from which he recruited his men.

In July, 1913, the Hon. John Lind, formerly governor of Minnesota, was dispatched to the City of Mexico. In an address to Congress (August 27th), explanatory of the mission, President Wilson declared that the development of Mexico could be "sound and lasting only if it be the product of a genuine freedom, a just and ordered government founded upon law." Conditions had not improved, but had rather "grown worse," and the pacification of the country by the authorities at the capital was "evidently impossible by any other means than force." As friends it was, he said, our duty "at least to volunteer our good offices—to offer to assist" in effecting some arrangement "which would bring relief and peace and set up a universally acknowledged political authority." He had therefore sent Mr. Lind as his "personal spokesman and representative," who, while paying "the most

scrupulous regard to the sovereignty and independence of Mexico," was to offer "counsel and assistance." The conditions of a "satisfactory settlement," as specified in his instructions to Mr. Lind, were an immediate armistice, an "early and free election" in which all would "agree to take part," a pledge by Huerta not to be a candidate for the presidency, and "the agreement of all parties to abide by the results of the election and co-operate in the most loyal way in organizing and supporting the new administration."

Mr. Lind, said President Wilson, "executed his delicate and difficult mission with singular tact, firmness, and good judgment," but "the proposals he submitted were rejected," partly, as was believed, because the authorities at Mexico City "had been grossly misinformed and misled" as to the "earnest friendliness and yet sober determination" of the American people "that some just solution be found for the Mexican difficulties," and as to the fact that "the present administration spoke, through Mr. Lind, for the people of the United States." The effect of this "unfortunate misunderstanding" on the part of those authorities was, said President Wilson, "to leave them singularly isolated and without friends" who could "effectually aid them." We could not, he declared, "thrust our good offices upon them"; and having, as was our duty, offered our "active assistance," it had become "our duty to show what true neutrality will do to enable the people

of Mexico to set their affairs in order again and wait for a further opportunity to offer our friendly counsels." For the rest, the President said he deemed it his duty to exercise the authority conferred upon him by the act of March 14, 1912, to the end that neither side to the struggle should receive any assistance from the United States, and he should "follow the best practice of nations in the matter of neutrality by forbidding the exportation of arms or munitions of war of any kind from the United States to any part of the Republic of Mexico." "We cannot," he declared, "in the circumstances be the partisans of either party to the contest that now distracts Mexico, or constitute ourselves the virtual umpire between them." In conclusion, he adverted to the support given by several governments in securing for Mr. Lind a hearing.

The attitude of the Mexican authorities was set forth in a note addressed to Mr. Lind (August 16th) by Señor F. Gamboa, Secretary for Foreign Affairs. In this note Señor Gamboa affirmed the regularity of the provisional government under Article 85 of the Mexican constitution, and adverted to the fact that diplomatic correspondence between the two countries had continued without interruption. The provisional government, he declared, exercised control over eighteen of the twenty-seven Mexican States, over the three territories and the federal district, and over the custom-houses. The restoration of order was, he said, impeded by assistance de-

rived by rebels from the United States; and as to the intimation of a purpose to respect Mexico's "sovereignty and independence," he remarked that it could hardly be dealt with in writing. An immediate armistice could not, he said, be proposed without tolerating bandits and recognizing as belligerents the rebels styling themselves Constitutionalists. As to the request for the exclusion of Huerta as a candidate, he suggested that, besides being "strange and unwarranted," there was the risk that it "might be interpreted as a matter of personal dislike." In conclusion Señor Gamboa declared that, but for his government's feeling of sincere esteem and friendliness, the proposals borne by Mr. Lind would, "because of their humiliating and unusual character, hardly admissible even in a treaty of peace after a victory," have been immediately rejected; and in response to the intimation that if Mexico could suggest a better way the United States would consider it, he proposed the "equally decorous arrangement" of the reciprocal and unconditional reception of ambassadors, thus restoring relations to the basis of "mutual respect, which is indispensable between two sovereign entities wholly equal before law and justice."

In October, 1913, Huerta committed a *coup a état*, arresting a number of members of the Congress and assuming dictatorial powers. For some weeks the press was filled with forecasts of immediate armed intervention by the United States for his elimination,

but these were not confirmed. On December 2d, however, President Wilson, in his opening address to Congress, said that there could be "no certain prospect of peace in America" until General Huerta had "surrendered his usurped authority in Mexico"; until it was indeed on all hands understood "that such pretended governments will not be countenanced or dealt with" by the United States. Of "constitutional government in America, we are," President Wilson affirmed, "more than its friends, we are its champions," since in no other way could our neighbors "work out their own development in peace and liberty. Mexico," he declared, "has no government." The "mere military despotism" set up in the City of Mexico "originated," he said, "in the usurpation of Victoriano Huerta, who, after a brief attempt to play the part of constitutional President," had "at last cast aside even the pretence of legal right and declared himself dictator." Even if he had succeeded in his purposes, he would, said President Wilson, "have set up nothing but a precarious and hateful power, which could have lasted but a little while, and whose eventual downfall would have left the country in a more deplorable condition than ever." But he had not succeeded. "He has," declared President Wilson, "forfeited the respect and the moral support even of those who were at one time willing to see him succeed. Little by little he has been completely isolated. By a little every day his power and prestige are crumbling, and

the collapse is not far away. We shall not, I believe, be obliged to alter our policy of watchful waiting. And then, when the end comes, we shall hope to see constitutional order restored in distressed Mexico by the concert and energy of such of her leaders as prefer the liberty of their people to their own ambitions."

Mr. Lind left the City of Mexico on November 12, 1913, and for some time afterwards remained with the United States squadron at Vera Cruz. On April 9, 1914, a boatload of sailors from the U. S. gunboat *Dolphin*, on landing at Tampico within the federal lines and zone of military operations, were placed under arrest, but were soon released. Both the Mexican federal commander and Huerta expressed their regret. Rear-Admiral Mayo, however, demanded a salute of twenty-one guns, which Huerta refused unless the United States would in writing agree to return it, maintaining that his expression of regret and the punishment of the officer by whom the arrest was made should suffice. The United States insisted on compliance with the demand. On April 14th the North Atlantic fleet was ordered to Tampico, and on the following day Rear-Admiral Fletcher proceeded, under orders, to occupy Vera Cruz, which he did with the loss of twelve killed and fifty wounded, the Mexican losses being much greater. President Wilson, in an address to Congress on April 20th, said he had deemed it his duty "to insist that the flag of the United States should be

saluted in such a way as to indicate a new spirit and attitude on the part of the Huertistas." He stated that, if the tests of the Mexican constitution were accepted, the country had "no government," but added: "We would not wish even to exercise the good offices of friendship without their (the Mexican people's) welcome and assent. The people of Mexico are entitled to settle their own domestic affairs in their own way, and we sincerely desire to respect their right." He therefore asked Congress to approve his use of the armed forces of the United States in such ways and to such an extent as might be necessary "to obtain from General Huerta and his adherents the fullest recognition of the rights and dignity of the United States." "There can," said President Wilson, in conclusion, "in what we do be no thought of aggression or of selfish aggrandizement. We seek to maintain the dignity and authority of the United States only because we wish always to keep our great influence unimpaired for the uses of liberty, both in the United States and wherever else it may be employed for the benefit of mankind."

By a joint resolution, approved April 22d, Congress declared that, "in view of the facts presented by the President . . . with regard to certain affronts and indignities committed against the United States in Mexico," he was "justified in the employment of the armed forces of the United States to enforce his demand for unequivocal amends" for such "affronts

and indignities." The joint resolution at the same time disclaimed "any hostility to the Mexican people or any purpose to make war upon Mexico."

April 30th General Funston, with nine thousand regulars, occupied Vera Cruz, the sailors returning to their ships. Meanwhile, diplomatic relations had been severed, and passports were handed to the *chargé d'affaires* of the United States at the City of Mexico and to the Mexican *chargé d'affaires* at Washington. On April 23d Huerta issued a general amnesty, and Carranza, in a note to Mr. Bryan, protested that the hostile acts of the United States would "drag us into an unequal war." On the same day, however, the ambassadors of Argentina, Brazil, and Chile tendered their mediation. This offer was accepted on both sides, and the mediators met at Niagara on May 20th. On June 14th a protocol was signed. It provided that a new government, constituted by agreement between the Mexican factions, should be recognized by the United States; that the United States should demand no war indemnity or other material satisfaction, and that an amnesty should be extended to foreigners in Mexico for all political offences.

July 15th Huerta resigned, and a makeshift administration was locally set up under Francisco Carbajal. At a convention then in session at Aguascalientes, composed of representatives of Carranza, Villa, and Zapata, it was proposed to entrust the government to a provisional committee; but, as

Carranza refused to yield his claims to the presidency, the convention proclaimed General Gutierrez as provisional President. To this act Villa and Zapata announced their adhesion, but General Obregon, whose support proved to be of great value, adhered to Carranza. The City of Mexico was occupied first by one party and then by another. The Villistas continued to be active in the north, but their leader's prestige was broken by his defeat by General Obregon at Celaya on April 2, 1915.

On June 2d President Wilson issued a public statement in regard to Mexico. In the hour of their success the leaders of the revolution had, he said, disagreed and turned their arms against one another, with the result that Mexico was "starving and without a government." In these circumstances the United States must, he said, presently do what it had not felt at liberty to do, "lend its active moral support to some man or group of men, if such may be found, who can rally the suffering people of Mexico to their support in an effort to ignore, if they cannot unite, the warring factions of the country, return to the constitution of the republic so long in abeyance, and set up a government at Mexico City which the great powers of the world can recognize and deal with." He therefore "publicly and very solemnly" called upon the leaders of factions to act together, and warned them that unless they did so within a very short time the United States would be constrained to decide what means

should be employed "in order to help Mexico save herself and serve her people."

Villa, who had suffered yet another defeat, made overtures to the Constitutionalists for a conference, but denied the right of the United States to intervene. The situation did not improve, and several weeks later the six ranking Latin-American representatives—the ambassadors of Argentina, Brazil, and Chile, and the ministers of Bolivia, Guatemala, and Uruguay—were called into consultation by the United States, with a view to find a solution. After the first conference, which was held on August 5th, an appeal was issued to the leaders of factions to come together and compose their differences. The appeal failed, but, as Secretary Lansing afterwards explained, it was found that the chiefs associated with Villa answered independently, while those associated with Carranza referred the appeal to him; and from this it was inferred that, while the Villistas lacked a central organization, there existed among the Carrancistas "a unity and loyalty which indicated the ultimate triumph of that faction," especially as they controlled approximately seventy-five per cent. of the territory of Mexico. In consequence, recognition was on October 19th extended to the Carranza government. In the note of the United States it was styled the "*de facto* government of Mexico."

On March 9, 1916, an attack was made on the town of Columbus, New Mexico, by a force of about

fifteen hundred men under the command of Villa, and a number of Americans, including some soldiers, were killed, and various acts of destruction committed before the invaders were driven back into Mexico. The next day President Wilson publicly announced that an adequate force would "be sent at once in pursuit of Villa, with the single object of capturing him and putting a stop to his forays," and that this could and would be done "in entirely friendly aid of the Constitutionalist authorities of Mexico, and with scrupulous respect for the sovereignty of that republic." Five days later, what was called a "punitive expedition" was sent into Mexico, under command of General Pershing.

A question thus arose as to the extent to which the basal principle of the inviolability of the territory of an independent state may be held to yield to the right of self-defence. In the classic case of the steamer *Caroline*, which, while in the service of Canadian insurgents, a British force from Canada, making a sudden incursion across the Niagara River, destroyed in American waters, Mr. Webster, as Secretary of State, declared that the exceptions to the principle of inviolability, growing out of the necessity of self-defence, should be confined to cases in which that necessity was "instant, overwhelming, and leaving no choice of means; and no moment for deliberation." In the case at Columbus, complaint was made that the punitive force was sent into Mexico without formal notice to the government

and without its consent. Discussions had taken place at Washington as to a possible arrangement on the lines of the agreements entered into from 1882 to 1896, which provided that under specified conditions the regular troops of the two governments might, when in pursuit of savage Indians, reciprocally cross the boundary, but stipulated that they should not remain longer than was necessary to enable them to pursue the band whose trail they followed. The negotiations at Washington having failed to result in a definitive understanding, the discussions were continued on the frontier by Generals Scott and Funston on the part of the United States, and by Gen. Alvaro Obregon, Secretary of War and Marine, on the part of Mexico. Various proposals were exchanged, but the insistence of Mexico on the withdrawal of the force sent in pursuit of Villa proved to form an obstacle to an agreement. The situation was then further complicated by a raid made by a band of Mexican outlaws on the night of May 5th on Glenn Springs, Texas, twenty miles north of the border. American troops were subsequently sent in pursuit of the raiders. They penetrated one hundred and sixty-eight miles into Mexico, without encountering any Mexican troops, and twelve days later recrossed the line into the United States.

On the same day—May 22d—the Mexican government, being then unaware of their return, dispatched to the United States an extended protest, which, while declaring that their entrance into Mexico

constituted a violation of the national sovereignty and gravely endangered the harmony and good relations between the two countries, asked for their immediate withdrawal and complete abstention from the dispatch of similar expeditions. The Mexican government, said the note, understood its obligation to protect the frontier, but expected the United States also to protect its side; and, if incursions should take place, they should be regarded as a subject of "pecuniary reparation" and a reason for adopting "a combined defence." Mexico, it was asserted, could not be held responsible for the incursions of outlaws, while doing everything possible to prevent them; but the United States, in sending regulars into Mexico against the express will of the government, committed an act for which it was manifestly responsible. In these circumstances the Mexican government not only would have to consider the sending of further troops into its territory as an act of invasion against which it would be forced to defend itself, but also must insist upon the withdrawal of those remaining in Chihuahua on account of the Columbus raid; and in this relation the note appealed to Article 21 of the treaty of Guadalupe Hidalgo of 1848, which provides that, in case of disagreements between the two governments, resort shall not be had to "reprisals, aggression, or hostility of any kind," until the government that deems itself aggrieved "shall have maturely considered, in the spirit of peace and good neighborship, whether it

would not be better that such difference should be settled by the arbitration of commissioners appointed on each side or by that of a friendly nation," and that, should this be proposed by either party, it shall be accepted by the other, "unless deemed by it altogether incompatible with the nature of the difference or the circumstances of the case."

Having thus dealt with the legal aspects of the subject, the note proceeded to request a more categorical explanation of the "real intentions" of the United States, especially in view of the repeated protestations of friendship for Latin-American countries, and of the absence of any intention to intervene in their internal affairs, or to acquire their territory, or to launch into a conflict with Mexico, protestations with which, said the note, the acts of the military authorities were in conflict. More than two months had elapsed since the Columbus expeditcn was dispatched; its presence and movements gave rise to popular feeling, as was shown in the collision with the people at Parral; and if the retention of the troops in Mexico, after the dispersal of the Villa bands, was due to political causes or reasons of "internal policy of the United States," the discrepancy was only accentuated. As further grounds of suspicion, the note specified the "decided support given at one time to Villa by General Scott and the State Department," this support being, so the note declared, "the principal cause of the prolongation of the civil war in Mexico for many months"; the

refusal to define by agreement the number, kind, and operations of the American forces to be used in Mexico, and the sending of infantry and artillery, which indicated regular Mexican forces as their object; and the detention of shipments of arms and ammunition purchased in the United States by the Mexican government, as well as of machinery for the manufacture of ammunition. If the United States was thus seeking to protect itself against the emergency of a future conflict, it would, said the note, "be preferable to say so." Mexico could not wish war with the United States; war could occur only in consequence of the "deliberate purpose" of the latter. The Mexican government therefore formally invited the United States "to support its declarations and protests of amity with real and effective action" such as would "convince the Mexican people of the sincerity of its purposes"; and this action, declared the note, could not be other than "the immediate withdrawal of the American troops which are now in Mexican territory."

Before this note was answered, the Republican National Convention was held at Chicago. The platform, adopted June 8th, denounced "the indefensible methods of interference" employed by the administration "in the internal affairs of Mexico," and referred with "shame" to its permitting existing conditions to continue, first, by "failure to act promptly and firmly," and secondly, "through recognition of one of the factions responsible" for them.

"We pledge our aid," declared the platform, "in restoring order and maintaining peace in Mexico. We promise to our citizens on and near the border, and those in Mexico, wherever they may be found, adequate and absolute protection in their lives, liberty, and property." Governor Hughes, in a telegram accepting the nomination, declared that the country had "suffered incalculably from the weak and vacillating course which has been taken with regard to Mexico, a course lamentably wrong with regard to both our rights and our duties. We interfered without consistency; and, while seeking to dictate when we were not concerned, we utterly failed to appreciate and discharge our plain duty to our own citizens."

The platform subsequently adopted by the Democratic National Convention at St. Louis, on June 16th, makes, in regard to Mexico, the following declaration:

"The want of a stable, responsible government in Mexico, capable of repressing and punishing marauders and bandit bands, who have not only taken the lives and seized and destroyed the property of American citizens in that country, but have insolently invaded our soil, made war upon and murdered our people thereon, has rendered it necessary temporarily to occupy, by our armed forces, a portion of the territory of that friendly state.

"Until, by the restoration of law and order therein, a repetition of such incursions is improbable, the

necessity for their remaining will continue. Intervention, implying as it does military subjugation, is revolting to the people of the United States, notwithstanding the provocation to that course has been very great, and should be resorted to, if at all, only as a last resort. The stubborn resistance of the President and his advisers to every demand and suggestion to enter upon it, is creditable alike to them and to the people in whose name he speaks."

The declaration that it had been necessary to "occupy," even though "temporarily," a part of the teritory of Mexico, evidently carried the controversy to a point beyond that which was reached in the original pursuit of Villa. This phase of the situation is manifest in the answer made by Mr. Lansing, on June 20th, to the Mexican protest of the 22d of May. After speaking of the "discourteous tone and temper" of the protest, Mr. Lansing animadverts upon the chaotic conditions that had prevailed in Mexico during the past three years; upon the apparent protection given by the government to some of the bandit leaders; upon the failure of the Mexican forces to co-operate or assist in the pursuit of Villa; and upon the attitude of the Mexican representatives in the discussions regarding the presence of American troops in that country, an attitude from which, he declared, the conclusion "might be drawn" that Carranza did not intend or desire that the outlaws should be captured, destroyed, or dispersed. Replying to the statement that Villa

at one time had the support of American officers and of the State Department, Mr. Lansing remarked that the Carranza government had, "from the moment of its recognition," had the "undivided support" of the United States, as shown in many ways. In discussing the original crossing of the expedition in pursuit of Villa, Mr. Lansing observed that there was no time to reach an agreement "other than that of March 10–13, now repudiated by General Carranza"; but, in the course of his answer, he subsequently "admitted" that the American troops had "crossed the international boundary in hot pursuit of the Columbus raiders and without notice to or the consent of" the Mexican government, and added that the protestations made by the President, the State Department, and other American authorities, "that the object of the expedition was to capture, destroy, or completely disperse the Villa bands of outlaws or to turn this duty over to the Mexican authorities when assured that it would be effectively fulfilled," had been "carried out in perfect good faith by the United States." The circumstances of the crossing were, he declared, such that "immediate action alone could avail." Nor could the request made in the note of May 22d for the immediate withdrawal of the American forces be entertained. While the inability of the Mexican government to check the outrages complained of might, said Mr. Lansing, excuse its failure to do so, it only made stronger the duty of the United States to check them. The United

States had not, he affirmed, sought the duty "of pursuing bandits who, under fundamental principles of municipal and international law, ought to be pursued and arrested and punished by Mexican authorities"; the United States would be glad to have this obligation fulfilled by Mexico; but if the "*de facto* government" was pleased to ignore this obligation and to believe that, if the American troops were not retired, there was, as it had been intimated, "no further recourse than to defend its territory by an appeal to arms," the United States must impress upon it the fact that the execution of this threat would "lead to the gravest consequences." While the United States "would deeply regret such a result," it could not, declared Mr. Lansing, recede from its "settled determination to maintain its national rights and to perform its full duty in preventing further invasions of the territory of the United States and in removing the peril which Americans along the international boundary have borne so long with patience and forbearance."

Meanwhile, orders had been given to the Mexican commanders "not to permit American forces from General Pershing's column to advance farther south, nor to move either east, south, or west, from the points where they are located, and to oppose new incursions of American soldiers into Mexican territory." These orders were, it seems, brought by General Trevino to the attention of General Pershing, who replied to the effect that he received orders only

from his own government. On June 22d a detachment moving eastward, at some distance from its base, became engaged with Mexican troops at Carrizal, and as a result of the encounter several men on both sides were killed and wounded and seventeen Americans were made prisoners. The incident is thus explained in a communication handed to Mr. Lansing by Mr. Arredondo, the Mexican diplomatic representative at Washington. The United States replied that it could regard the explanation only as a formal avowal of "deliberately hostile action" and demanded "the immediate release of the prisoners, together with any United States property taken with them." It was added that the United States expected an early statement from the Mexican government through diplomatic channels, and not through subordinate military commanders, as to the course of action which it wished the United States to understand had been determined upon. The prisoners were subsequently released. In this way a final crisis was averted, but the strain of the situation was by no means ended.

Subsequently a joint commission, consisting of three American and three Mexican members, was organized for the purpose of seeking a solution of the pending complications. This commission continued in existence through the remainder of the year, but the formulation on comprehensive lines of an acceptable plan of action was found to be unattainable.

The American troops were, however, gradually withdrawn from Mexico, and early in 1917 an ambassador was sent by the United States to the Carranza government, under whose auspices a new national constitution was adopted.

In connection with the principle of non-intervention, a prominent place must be given to the Monroe Doctrine, the object of which was to render intervention unnecessary by precluding the occasions for it. On September 26, 1815, the Emperors of Austria and Russia, and the King of Prussia, signed at Paris a personal league commonly called the Holy Alliance, the design of which was declared to be the administration of government, in matters both internal and external, according to the precepts of justice, charity and peace. To this end the allied monarchs, "looking upon themselves as delegated by Providence" to rule over their respective countries, engaged to "lend one another, on every occasion and in every place, assistance, aid, and support." In the course of time, as revolt against the arrangements of the Congress of Vienna spread and grew more pronounced, the alliance came more and more to assume the form of a league for the protection of the principle of legitimacy—the principle of the divine right of kings as opposed to the rights of the people—against the encroachments of liberal ideas. Congresses were held at Aix-la-Chapelle, Troppau and Laybach, for the pur-

pose of maturing a programme to that end. The league was joined by the King of France; but England, whose Prince Regent had originally given it his informal adhesion, began to grow hostile. Her own government, with its free and parliamentary institutions, was founded on a revolution; and the allies, in the circular issued at Troppau, had associated "revolt and crime," and had declared that the European powers "had an undoubted right to take a hostile attitude in regard to those states in which the overthrow of the government might operate as an example." In a circular issued at Laybach they denounced "as equally null, and disallowed by the public law of Europe, any pretended reform effected by revolt and open force." In October, 1822, they held a congress at Verona for the purpose of concerting measures against the revolutionary government in Spain; and in yet another circular announced their determination "to repel the maxim of rebellion, in whatever place and under whatever form it might show itself." Their ultimate object was more explicitly stated in a secret treaty in which they engaged mutually "to put an end to the system of representative governments" in Europe, and to adopt measures to destroy "the liberty of the press." Popular movements were forcibly suppressed in Piedmont and Naples; and in April, 1823, France, acting for the allies, invaded Spain, for the purpose of restoring

the absolute monarch Ferdinand VII. Before the close of the summer such progress had been made in this direction that notice was given to the British government of the intention of the allies to call a congress with a view to the termination of the revolutionary governments in Spanish America. At this time Lord Castlereagh, who had always been favorably disposed towards the alliance, had been succeeded in the conduct of the foreign affairs of England by George Canning, who reflected the popular sentiment as to the policy of the allied powers. The independence of the Spanish-American governments, which had now been acknowledged by the United States, had not as yet been recognized by Great Britain. But English merchants, like those of the United States, had developed a large trade with the Spanish-American countries, a trade which the restoration of those regions to a colonial condition would, under the commercial system then in vogue, have cut off and destroyed.

In view of this common interest, Canning, in the summer of 1823, began to sound Richard Rush, the American minister at London, as to the possibility of a joint declaration by the two governments against the intervention of the allies in Spanish America. Canning once boasted that he had called into being the New World to redress the balance of the Old. The meaning of this boast

can be understood only in the light of his proposals. In a "private and confidential" note to Rush, of August 23, 1823, he declared: "1. We conceive the recovery of the colonies by Spain to be hopeless. 2. We conceive the question of the recognition of them, as independent states, to be one of time and circumstances. 3. We are, however, by no means disposed to throw any impediment in the way of an arrangement between them and the mother-country by amicable negotiation. 4. We aim not at the possession of any portion of them ourselves. 5. We could not see any portion of them transferred to any other power with indifference." If these opinions and feelings were shared by the United States, Canning thought that the two governments should declare them in the face of the world, as the best means of defeating the project, if any European power should cherish it, of subjugating the colonies in the name of Spain, or of acquiring any part of them itself by cession or by conquest. He therefore desired Rush to act upon his proposals at once, if he possessed the power to do so. It was said of Richard Rush by an eminent Senator that, in the course of an unusually long and important diplomatic career, he "never said a word that was improper, nor betrayed a thought that might peril his country's fortunes." On the present occasion, he acted with his usual good judgment. His powers did not embrace the making of such a declara-

tion as Canning desired; but, while he expressed the opinion that Canning's sentiments, except as to independence, which the United States had already acknowledged, were shared by his government, he lost no time in reporting the matter to the President. Monroe, on receiving the correspondence, hastened to take counsel upon it. Jefferson, whose opinion was solicited, replied: "Our first and fundamental maxim should be never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to intermeddle with cis-Atlantic affairs." He was disposed to look with favor upon co-operation with England in the direction suggested. Madison shared his opinion. In the cabinet of Monroe, Calhoun inclined to invest Rush with power to join England in a declaration, even if it should pledge the United States not to take either Cuba or Texas. The President at first inclined to Calhoun's idea of giving Rush discretionary powers, but this was opposed by John Quincy Adams, who maintained that we could act with England only on the basis of the acknowledged independence of the Spanish-American states. The views of Adams prevailed. His basal thought was the right of self-government, which he believed it to be the duty and the interest of the United States to cherish and support. He thought that the United States should let England make her own declaration. This England did, without waiting

for the decision of the United States. On October 9, 1823, Canning, in an interview with Prince de Polignac, French ambassador, declared that while Great Britain would remain "neutral" in any war between Spain and her colonies, the "junction" of any foreign power with Spain against the colonies would be viewed as constituting "entirely a new question," upon which Great Britain "must take such decision" as her interests "might require."

In his annual message to Congress of December 2, 1823, President Monroe devoted to the subject a long passage. The substance of it is, however, conveyed in a few sentences. After adverting to the abstention of the United States from European wars and to the dangers to be apprehended from the system of the allied powers, he declared: "We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers, to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power, we have not interfered and shall not interfere. But with the governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling

in any other manner their destiny, by any European power, in any other light than a manifestation of an unfriendly disposition towards the United States."

The sentences just quoted specially relate to the aims of the Holy Alliance; but there is another passage in the message which is also often cited as embodying the Monroe Doctrine. In 1821 the Emperor of Russia, as we have seen, issued a ukase, by which he assumed, as owner of the shore, to exclude foreigners from carrying on commerce and from navigating and fishing within a hundred Italian miles of the northwest coast of America, from Bering Straits down to the fifty-first parallel of north latitude. As this assertion of title embraced territory which was claimed by the United States as well as by Great Britain, both those governments protested against it, as well as against the exorbitant jurisdictional pretension with which it was associated. In consequence the Russian government proposed to adjust the matter by amicable negotiation; and instructions to that end were prepared by John Quincy Adams for the American ministers at London and St. Petersburg. At a meeting of the cabinet on June 28, 1823, while the subject was under discussion, Adams expressed the opinion that the claim of the Russians could not be admitted, because they appeared to have no "settlement" upon the territory in dispute; and on

July 17 he informed Baron Tuyl, then Russian minister at Washington, "that we [the United States] should contest the right of Russia to any territorial establishment on this continent, and that we should assume distinctly the principle that the American continents are no longer subjects for *any* new European colonial establishments." With reference to this subject, President Monroe, in the message above quoted, said: "In the discussions to which this interest has given rise, and in the arrangements by which they may terminate, the occasion has been judged proper for asserting as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers."

By the term "future colonization," President Monroe evidently intended to convey the same meaning as was expressed by the terms "settlement" and "colonial establishments" previously employed by Adams. They were used to denote, what they were then commonly understood to mean, the acquisition of title to territory by original occupation and settlement. But in the course of time the phrase "future colonization" came to receive a broader interpretation. President Polk, in his annual message of December 2, 1845, declared that,

while existing rights of every European nation should be respected, it should be "distinctly announced to the world as our settled policy, that no future European colony or dominion shall, with our consent, be planted or established on any part of the North American continent." By pronouncing against the establishment by a European power of any "dominion"—a term which included even the voluntary transfer of territory already occupied—President Polk expressed a conception which has come generally to prevail, and which is embodied in the popular phrase: "No more European colonies on these continents." The same meaning is conveyed in the phrase—"America for the Americans," which signifies that no European power shall be permitted to acquire new territory or to extend its dominions in the Western Hemisphere.

In this sense, but apparently with the qualification in the particular case that only a forcible acquisition of territory was forbidden, the Monroe Doctrine was invoked by President Cleveland in respect of the Venezuelan boundary question. This incident, as is well known, grew out of a long-standing dispute between Great Britain and Venezuela, which was the continuation of a dispute two centuries old between the Netherlands and Spain as to the limits of the Dutch and Spanish settlements in Guiana. In 1844 Lord Aberdeen proposed to Venezuela a conventional line, beginning at the

river Moroco. This proposal was declined; and, chiefly in consequence of civil commotions in Venezuela, negotiations remained practically in abeyance till 1876. Venezuela then offered to accept the Aberdeen line; but Lord Granville suggested a boundary farther west; and in subsequent negotiations the British demand was extended still farther in that direction. Venezuela, representing that this apparent enlargement of British dominion constituted a pure aggression on her territorial rights, invoked the aid of the United States on the ground of the Monroe Doctrine. Venezuela asked for arbitration, and in so doing included in her claim a large portion of British Guiana. Great Britain at length declined to arbitrate unless Venezuela would first yield all territory within a line westward of that offered by Lord Aberdeen. In these circumstances, Mr. Olney, as Secretary of State, in instructions to Mr. Bayard, American ambassador at London, of July 20, 1895, categorically inquired whether the British government would submit the whole controversy to arbitration. In these instructions Mr. Olney declared that the Monroe Doctrine did not establish a "protectorate" over other American states; that it did not relieve any of them "from its obligations as fixed by international law nor prevent any European power directly interested from enforcing such obligations or from inflicting merited punishment for the breach of them"; but that its

"single purpose and object" was that "no European power or combination of European powers" should "forcibly deprive an American state of the right and power of self-government and of shaping for itself its own political fortunes and destinies." This principle he conceived to be at stake in the dispute between Great Britain and Venezuela, because, as the dispute related to territory, it necessarily imported "political control to be lost by one party and gained by the other." "To-day," declared Mr. Olney, "the United States is practically sovereign on this continent, and its fiat is law upon the subjects to which it confines its interposition." All the advantages of this superiority were, he affirmed, at once imperilled if the principle should be admitted that European powers might convert American states into colonies or provinces of their own. Lord Salisbury declined unrestricted arbitration; and, when his answer was received, President Cleveland, on December 17, 1895, laid the correspondence before Congress. "If a European power, by an extension of its boundaries, takes possession of the territory of one of our neighboring republics against its will and in derogation of its rights," it was, said President Cleveland, the precise thing which President Monroe had declared to be "dangerous to our peace and safety"; but he added that "any adjustment of the boundary which that country [Venezuela] may deem for her advantage and may enter

into of her own free will cannot of course be objected to by the United States." He then recommended the appointment by the United States of a commission to investigate the merits of the controversy, and declared that, if the title to the disputed territory should be found to belong to Venezuela, it would be the duty of the United States "to resist by every means in its power, as a wilful aggression upon its rights and interests, the appropriation by Great Britain of any lands or the exercise of governmental jurisdiction over any territory which, after investigation, we have determined of right belongs to Venezuela." This declaration produced great excitement, in the United States as well as in England. So far as it seemed to imply, as the language has often been construed to do, that the United States possessed the right, by means of an *ex parte* commission, appointed by itself and composed of its own citizens, authoritatively to fix the boundary between two other independent nations, it went beyond the immediate necessities of the case. If the commission had ever reported, it is probable that its conclusions, which conceivably might not have been entirely acceptable either to Great Britain or to Venezuela, would have been treated as advisory rather than definitive, and would have been made the basis of further correspondence with both those governments. The actual position intended to be insisted upon, as appears by Mr. Olney's instruc-

tions to Mr. Bayard, as well as the rest of President Cleveland's message, was that the United States would resist the palpable and substantial encroachment upon and appropriation by Great Britain of Venezuelan territory. This position was quite in harmony with the spirit of the Monroe Doctrine. Congress unanimously provided for the appointment of a commission of investigation; but the commission, immediately after its organization, addressed to Mr. Olney, through its president, Mr. Justice Brewer, a letter setting forth its peaceful and non-partisan character and the desirability of securing the co-operation of Great Britain and Venezuela in obtaining evidence. At the close of his letter, Mr. Justice Brewer observed: "The purposes of the pending investigation are certainly hostile to none, nor can it be of advantage to any that the machinery devised by the government of the United States to secure the desired information should fail of its purpose." This statement was communicated to Great Britain as well as to Venezuela, and both governments promptly responded to the appeal. The labors of the commission were, however, brought to a close by the conclusion of a treaty of arbitration, signed by Great Britain and Venezuela, but negotiated between Great Britain and the United States, the predominant feature of which was the application of the principle of prescription, under the definite rule that fifty years' adverse holding

of a district, either by exclusive political control or by actual settlement, should suffice to constitute national title. The adoption of the principle of prescription, on which the arbitrators would necessarily have acted, even if it had not been incorporated into the treaty, at once rendered nugatory the greater part of the Venezuelan claim. Although the extreme British claim was not allowed, the territorial results of the arbitration were decidedly favorable to that government. It must, however, be conceded that the most important political result of the Venezuelan incident was not the decision upon the territorial question, but the official adoption of the Monroe Doctrine by the Congress of the United States, and its explicit acceptance by the principal maritime power of Europe.

An official exposition of the Monroe Doctrine was given by President Roosevelt in his annual message of December 3, 1901, in which he said: "The Monroe Doctrine is a declaration that there must be no territorial aggrandizement by any non-American power at the expense of any American power on American soil. It is in no wise intended as hostile to any nation in the Old World. . . . This doctrine has nothing to do with the commercial relations of any American power, save that it in truth allows each of them to form such as it desires. . . . We do not guarantee any state against punishment if it misconducts itself, provided that punish-

ment does not take the form of the acquisition of territory by any non-American power." An occasion for the practical application of this definition soon arose. On December 11, 1901, the German ambassador at Washington, in a promemoria reviewing the German claims against Venezuela and the latter's refusal to admit diplomatic interposition in the matter, stated that, if Venezuela should persist in this refusal, the German government, after delivering an ultimatum, would have to consider as a measure of coercion the blockade of the more important Venezuelan ports and, if this did not suffice, their "temporary occupation" and the "levying of duties" therein, but especially declared "that under no circumstances do we consider in our proceedings the acquisition or the permanent occupation of Venezuelan territory." In acknowledging the receipt of this memorandum, on December 16th, Mr. Hay adverted to the fact that the German ambassador, on his then recent return from Berlin, had conveyed personally to the President, and had afterwards repeated to himself, the assurance of the German Emperor that the Imperial government had no purpose or intention to make even the smallest acquisition of territory on the South American continent or the adjacent islands; and in view of this circumstance, and of the further assurance given in the memorandum, Mr. Hay, quoting in his note President Roosevelt's definition of December 3d, replied that the President, "appreciating the courtesy

of the German government in making him acquainted" with the situation, but "not regarding himself as called upon to enter into the consideration of the claims in question," believed that "no measures" would be taken which were "not in accordance with the well-known purpose" of the German Emperor, as set forth in the promemoria.

No coercive measures were taken till a year later, when Germany, Great Britain, and Italy instituted a blockade of certain Venezuelan ports. Prior to taking this step Great Britain, on November 13, 1902, also gave an assurance similar to that of Germany regarding the permanent occupation of territory, to which Mr. Hay replied that the government of the United States, although it "regretted that European powers should use force against Central and South American governments, could not object to their taking steps to obtain redress for injuries suffered by their subjects, provided that no acquisition of territory was contemplated."

The blockade, which was instituted only in December, 1902, ended on February 14–15, 1903, after President Castro had abandoned his previously persistent refusal to arbitrate. When the blockade was begun the minister of the United States at Caracas, with the permission of his government and the assent of Venezuela, took charge of British and of German interests in that country; and he afterwards assisted in arranging terms of arbitration. It was agreed that the claims of all the foreign governments

against Venezuela should be referred to mixed commissions at Caracas, sitting under conventions severally concluded by those governments with Venezuela; and that a demand made by the blockading powers for the preferential payment, in point of time, of awards made in their favor, as against awards made in favor of the non-blockading powers, should be referred to the Permanent Court at The Hague. The Permanent Court, in a suit to which the United States was a party, sustained this demand; and, in setting forth the grounds of its decision, particularly recited the fact that the non-blockading powers, including the United States, had never, pending the employment of measures of coercion, protested against the assertion by the blockaders of a right to special securities. It also adverted to the circumstance that, prior to the blockade, the Venezuelan government "categorically refused to submit its dispute with Germany and Great Britain to arbitration, which was proposed several times, and especially by the note of the German government of July 16, 1901."

Of the blockade and its ending, and of his own part in the transaction, President Roosevelt gave, in a speech at Chicago, April 2, 1903, the following narrative:

"The concern of our government was of course not to interfere needlessly in any quarrel so far as it did not touch our interests or our honor, and not to take the attitude of protecting from coercion any power

unless we were willing to espouse the quarrel of that power, but to keep an attitude of watchful vigilance and see that there was no infringement of the Monroe Doctrine, no acquirement of territorial rights by a European power at the expense of a weak sister republic—whether this acquisition might take the shape of an outright and avowed seizure of territory or of the exercise of control which would in effect be equivalent to such seizure. . . . Both powers assured us in explicit terms that there was not the slightest intention on their part to violate the principles of the Monroe Doctrine, and this assurance was kept with an honorable good faith which merits full acknowledgment on our part. At the same time, the existence of hostilities in a region so near our own borders was fraught with such possibilities of danger in the future that it was obviously no less our duty to ourselves than our duty to humanity to endeavor to put an end to that. Accordingly, by an offer of our good services in a spirit of frank friendliness to all the parties concerned, a spirit in which they quickly and cordially responded, we secured a resumption of peace—the contending parties agreeing that the matters which they could not settle among themselves should be referred to The Hague Tribunal for settlement." [1]

In popular discussions the position has sometimes been urged that it is a violation of the Monroe

[1] *Addresses and Presidential Messages of Theodore Roosevelt*, 1902–04, pp. 117–120.

Doctrine for a European power to employ force against an American republic for the purpose of collecting a debt or satisfying a pecuniary demand, no matter what may have been its origin. For this supposition there appears to be no published official sanction. It is true that a certain color is given to it by the citation in Wharton's *International Law Digest*, under the head of the "Monroe Doctrine," of two alleged manuscript instructions of Mr. Blaine to the American minister at Paris, of July 23 and December 16, 1881, as authority for the statement that "the government of the United States would regard with grave anxiety an attempt on the part of France to force by hostile pressure the payment by Venezuela of her debt to French citizens." The statement, however, is wholly inadvertent. Both instructions are published in the volume of *Foreign Relations* for 1881; and they refer, not to "hostile pressure," but to a rumored design on the part of France of "taking forcible possession of some of the harbors and a portion of the territory of Venezuela in compensation for debts due to citizens of the French Republic." Even in regard to this they nowhere express "grave anxiety," but merely argue that such a proceeding would be unjust to other creditors, including the United States, since it would deprive them of a part of their security; while they avow the "solicitude" of the government of the United States "for the higher object of averting hostilities between two republics for each of which

it feels the most sincere and enduring friendship." In 1861 the government of the United States admitted the right of France, Spain, and Great Britain to proceed jointly against Mexico for the satisfaction of claims. "France," said Mr. Seward on that occasion, in an instruction to the American minister at Paris, of June 26, 1862, "has a right to make war against Mexico, and to determine for herself the cause. We have the right and interest to insist that France shall not improve the war she makes to raise up an anti-republican or anti-American government, or to maintain such a government there." In a similar vein, Mr. Seward, writing to the American minister in Chile, on June 2, 1866, with reference to the hostilities then in progress between Spain and the republics on the west coast of South America, and particularly to the bombardment of Valparaiso by the Spanish fleet, declared that the United States did not intervene in wars between European and American states "if they are not pushed, like the French war in Mexico, to the political point"; that the United States had "no armies for the purpose of aggressive war; no ambition for the character of a regulator."

The supposition is further discredited by the course of President Roosevelt and Mr. Hay in the case of the Venezuelan blockade. In addition to the declarations and acts which have already been mentioned, it is important to recall their response on the same occasion to the note of the Argentine government of

December 29, 1902, signed by Señor Luis M. Drago, then Minister of Foreign Relations, enunciating the "doctrine" that "the public debt cannot give rise to armed intervention nor even the actual occupation of the territory of American nations by a European power." Mr. Hay, on February 17, 1903, quoting President Roosevelt's definition of the Monroe Doctrine in the annual message of December 3, 1901, and an analogous passage in the annual message of December 2, 1902, declined to commit the United States to the Drago declaration.[1]

A tendency is often exhibited to attach decisive importance to particular phrases in President Monroe's message of 1823, or to the special circumstances in which it originated, as if they furnished a definitive test of what should be done and what should be omitted under all contingencies. The verbal literalist would, on the one hand, make the United States an involuntary party to all controversies between European and American governments, in order that the latter may not be "oppressed"; while the historical literalist would, on the other hand, treat Monroe's declarations as obsolete, since the conditions to which they specially referred no longer exist. But, when we consider the mutations in the world's affairs, these modes of reasoning must be confessed to be highly unsatisfactory. The "Monroe Doctrine" has in reality become a convenient title by which is denoted a principle that

[1] *Foreign Relations of the United States*, 1903, pp. 1–6.

doubtless would have been wrought out if the message of 1823 had never been written—the principle of the limitation of European power and influence in the Western Hemisphere. We have seen, in the first paper in this series, that, as early as 1778, the Continental Congress, in the treaty of alliance with France, obtained from its ally the renunciation of any claim to the British possessions in North America. When Washington, in his Farewell Address, observed that Europe had "a set of primary interests, which to us have none, or a very remote relation," he lent emphasis to the thought that it was desirable, so far as possible, to dissociate America from the vicissitudes of European politics. Giving to this thought a further reach, Jefferson, while President, in 1808, declared: "We shall be satisfied to see Cuba and Mexico remain in their present dependence; but very unwilling to see them in that of either France or England, politically or commercially. We consider their interests and ours as the same, and the object of both must be to exclude European influence from this hemisphere." On January 15, 1811, twelve years before Monroe's message was published, Congress, in secret session, "taking into view the peculiar situation of Spain and her American provinces," and "the influence which the destiny of the territory adjoining the southern border of the United States might have upon their security, tranquillity, and commerce," resolved that the United States could not, "with-

out serious inquietude, see any part of said territory pass into the hands of any foreign power"; and the President was authorized to occupy all or any part of the Floridas, "in the event of an attempt to occupy the same, or any part thereof, by any foreign government." These incidents and avowals, although they detract nothing from the force of Monroe's declarations, with which they are indeed in entire harmony, point to the rational conclusion that those declarations are to be considered rather as an important expression than as the exclusive and final test of American policy. In the long struggle, which was eventually crowned with success, to exclude European domination from the interoceanic canal routes, and to secure the construction of a neutralized canal under American auspices, American statesmen no doubt were aided by the authority of Monroe's declarations, but were by no means dependent upon them. It is a remarkable fact that Seward, neither in the formal demand upon France in 1865 to desist from armed intervention in Mexico for the purpose of overthrowing the domestic republican government under Juarez and establishing on its ruins the foreign imperial government under Maximilian, nor in any of the official correspondence relating to the subject, mentioned the Monroe Doctrine, although his action came within the letter as well as the spirit of the message of 1823. President Polk, on the other hand, in pronouncing against the acquisition

of new dominion in North America by a European power, although he was well within the limits of the Monroe Doctrine as it is now understood, invoked a passage that fell far short of sustaining his position. It would be easy to cite many similar examples.

The Monroe Doctrine, as a limitation upon the extension of European power and influence on the American continents, is now generally recognized as a principle of American policy. To its explicit acceptance by Great Britain and Germany there may be added the declaration which was spread by unanimous consent upon the minutes of The Hague Conference, and which was permitted to be annexed to the signature of the American delegates to the convention for the peaceful adjustment of international disputes, that nothing therein contained should be so construed as to require the United States "to depart from its traditional policy of not entering upon, interfering with, or entangling itself in the political questions or internal administration of any foreign state," or to relinquish "its traditional attitude towards purely American questions."

An important development of the Monroe Doctrine was made by President Roosevelt in the case of Santo Domingo. In a letter read in New York, in May, 1904, at a dinner held to celebrate the anniversary of Cuban independence, he said: "Any country whose people conduct themselves well can count upon our hearty friendliness. If a nation

shows that it knows how to act with decency in industrial and political matters; if it keeps order and pays its obligations—then it need fear no interference from the United States. Brutal wrong-doing, or impotence which results in the general loosening of the ties of civilized society, may finally require intervention by some civilized nation, and in the Western Hemisphere the United States cannot ignore its duty." These declarations President Roosevelt repeated, with only slight changes in phraseology, in his annual message to Congress in the following December. On February 15, 1905, he transmitted to the Senate, for its advice and consent, a treaty concluded at Santo Domingo City on the 7th of the same month, under which the United States agreed to undertake the adjustment of all Dominican debts, foreign and domestic, and to that end to take charge of and administer the custom-houses. In the message accompanying the treaty, President Roosevelt stated that conditions in Santo Domingo had for many years been growing steadily worse, that there had been many disturbances and revolutions, and that debts had been contracted beyond the power of the republic to pay. Those who profited by the Monroe Doctrine must, he affirmed, accept certain responsibilities along with the rights which it conferred; and the justification for assuming the responsibility proposed in the present instance was to be found in the fact that it was incompatible with international equity for the United

States to refuse to allow other powers to take the only means at their disposal of satisfying the claims of their citizens and yet to refuse itself to take any such steps. Under the Monroe Doctrine the United States could not, said President Roosevelt, see any European power "seize and permanently occupy" the territory of an American republic, and yet such seizure might eventually offer the only way in which such a power could collect any debts, unless the United States should interfere. Under such circumstances the United States should take charge of the custom-houses. In the course of his message he further said: "Either we must abandon our duty under our traditional policy towards the Dominican people, who aspire to a republican form of government while they are actually drifting into a condition of permanent anarchy, in which case we must permit some other government to adopt its own measures in order to safeguard its own interests, or else we must ourselves take seasonable and appropriate action." And in conclusion he avowed the belief that the proposed treaty afforded a "practical test of the efficiency of the United States government in maintaining the Monroe Doctrine." The Senate adjourned without taking a vote on the treaty, final action on which was thus deferred. Meanwhile, under a *modus vivendi* concluded by President Roosevelt, an American citizen designated by him was placed by the Dominican government in charge of the collection of the revenues, a certain proportion

of which was to be deposited in a bank in New York, on account of the claims of creditors, till the question of ratification of the treaty should be definitely determined.

Subsequently, negotiations were taken up on different lines, to the extent of endeavoring to bring about a prior settlement of debts between Santo Domingo and her creditors, instead of leaving them to future adjustment by the United States. By a protocol between the United States and the Dominican Republic of January 31, 1903, the latter had already agreed to pay the sum of $4,500,000, on terms to be fixed by arbitrators, in full settlement of the claims of the San Domingo Improvement Company and certain other American companies allied with it, including indemnity for their relinquishment to the government of their properties and interests, including a railway. The arbitrators, on July 14, 1904, with the concurrence of their Dominican colleague, unanimously awarded that the stipulated sum should be paid in certain monthly instalments, and assigned as security the revenues of the custom-houses within a definite district. They also authorized the appointment of a financial agent by the United States to supervise the collection of such revenues, the San Domingo Improvement Company having previously exercised a general supervision over the customs under its contracts with the Dominican government.

It was estimated that the total debts of the

Dominican Republic amounted nominally to more than $30,000,000. An adjustment was in the end conditionally effected by the Dominican government of substantially all its debts, internal as well as foreign; and on this basis there was concluded on February 8, 1907, a new treaty by which the government was to issue new bonds to the amount of $20,000,000, payable in fifty years, if not sooner redeemed, and bearing interest at the rate of five per cent. On the other hand, it was agreed that the President of the United States should appoint a general receiver of Dominican customs to collect, with the aid of assistants similarly appointed, all the customs duties of the republic till all the bonds should be paid or retired, the United States engaging to give to the general receiver and his assistants "such protection" as it might "find to be requisite for the performance of their duties." No intervention beyond this in Dominican affairs was provided for.

This treaty was ratified by the Senate of the United States and by the Dominican Congress, and the ratifications were exchanged on July 8, 1907. It was duly carried into effect.

December 1, 1909, Mr. Knox, as Secretary of State, notified Señor Rodriguez, Nicaraguan *chargé d'affaires* at Washington, that the United States had decided no longer to recognize the government of President Zelaya in Nicaragua, and that Señor Rodriguez's functions as the diplomatic representative of that government were at an end. Passports

were enclosed to him, in case he should wish to leave the United States; but he was informed that, in case he should remain in Washington, he would be received on the same footing as the representatives of the revolutionary factions in control of the eastern and western parts of the country; that is to say, as an "unofficial channel" of communication with "*de facto* authorities," who, pending the establishment in Nicaragua of a government with which the United States could maintain diplomatic relations, would be held severally accountable for the protection of American interests in the districts which they respectively occupied. The reasons given for this step were (1) that President Zelaya had repeatedly violated the Washington conventions of 1907, which were designed to preserve the neutrality of Honduras and maintain peace in Central America, and had kept Central America in continuous turmoil; (2) that he had practically destroyed republican institutions and free and orderly government in Nicaragua; (3) that he had caused two American citizens, concerned in a revolutionary movement, to be executed with "barbarous cruelties," had menaced the American consulate at Managua, and had by "petty annoyances and indignities" made it impossible for the American minister longer to reside there; (4) that his rule had produced a condition of anarchy in which, responsible government having ceased to exist, the United States was obliged to look to factions in *de facto* control of particular

districts for the protection of American life and property.

January 10, 1911, Mr. Knox signed a loan convention with Honduras, for the purpose of rehabilitating the national finances. The Senate of the United States failed to ratify it. A similar fate awaited a treaty concluded with Nicaragua, June 6, 1911, which contemplated a loan by American bankers and followed the lines of the Dominican receivership. These efforts were popularly assailed as "dollar diplomacy." The aid of American bankers was indeed to a certain extent actually obtained. In August, 1912, in the midst of disorders, the United States, on the request of the Nicaraguan President, landed marines, explaining that it did so for the defence of its legation and the protection of American life and property, but declaring that the conditions that had prevailed under President Zelaya could not be restored. The marines had several encounters with revolutionists, and a detachment remained at the capital.

Subsequently Mr. Knox made a tour of the countries of Central America, as well as of Panama, Venezuela, Haiti, Santo Domingo, and Cuba. He sought to dispel apprehensions concerning the attitude of the United States, and particularly concerning the application of the Monroe Doctrine, which, in a speech at Panama, he said, would "reach the acme of its beneficence when it is regarded by the people of the United States as a reason why we should

constantly respond to the needs of those of our Latin-American neighbors who may find necessity for our assistance in their progress towards better government or who may seek our aid to meet their just obligations and thereby to maintain honorable relations to the family of nations."

In his opening address to the Second Pan-American Scientific Congress on December 27, 1915, Mr. Lansing, as Secretary of State, observing that the Monroe Doctrine was "founded on the principle that the safety of this Republic would be imperiled by the extension of sovereign rights by a European power over territory in this hemisphere," said that the United States had "within recent years . . . found no occasion, with the exception of the Venezuelan boundary incident, to remind Europe that the Monroe Doctrine continues unaltered a national policy of this Republic." Meanwhile, the American republics had "attained maturity"; and from the feeling that they constituted "a group, separate and apart from the other nations of the world" and "united by common ideals and common aspirations," there had resulted the "international policy of Pan-Americanism."

Addressing the same body on January 6, 1916, President Wilson, while declaring that the United States had proclaimed the Monroe Doctrine "on her own authority," and always had maintained and always would maintain it "upon her own responsibility," stated that it "demanded merely that

European governments should not attempt to extend their political system to this side of the Atlantic." But, as it did not "disclose the use which the United States intended to make of her power," there had come to exist among the States of America an uncertainty which must be removed by establishing "the foundations of amity so that no one will hereafter doubt them."

References:

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Schuyler's *American Diplomacy;*
Wharton's *Digest of International Law*, I, 172 *et seq.;*
Moore's *Digest of International Law*, VI, 11 *et seq.;*
Hodges, *The Doctrine of Intervention.*

As to the question of Recognition, see
Wharton's and Moore's *Digests*, supra, and Goebel's *Recognition Policy of the United States* (New York, 1916).

As to the Monroe Doctrine, see
Adams's (John Quincy) *Memoirs* (Diary);
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VII

THE DOCTRINE OF EXPATRIATION

THE Declaration of Independence enumerates as among the "inalienable rights" with which "all men" are "endowed by their Creator," "life, liberty, and the pursuit of happiness." It has often been remarked that this dogma, like the associated affirmation that "all men are created equal," was evidently considered as an abstraction, since its announcement was not conceived to render inadmissible the continued holding in bondage of a large servile population. This criticism, however, cannot, certainly in its more sinister sense, be accepted as just. All general declarations of human rights to a large extent represent aspirations, for the perfect fulfilment of which conditions altogether ideal would be requisite. So long as human conditions are imperfect, the realization of the highest human aspirations will be imperfect. Even admitting, therefore, that the enumerated rights belonged to "all men" and were "inalienable," there yet remained the task of determining what they actually included and what were their practical limitations. No

argument, beyond the common experience of daily life, was needed to demonstrate that the unregulated pursuit by each individual of his own will was incompatible with the existence of social order; and it was therefore freely conceded, even by the most extreme proponents of the theory of natural rights, that men, when living in society, must be considered as having yielded up a part of those rights for the sake of the common welfare. But the question still remained, to what extent had this been done?

We are now concerned with the answer to this question in only one particular. Does the right to "liberty" and the "pursuit of happiness," in the sense in which they may be called "inalienable," embrace, incidentally, a right on the part of the individual to expatriate himself at will? This was a question that was destined, in the growth and development of American policy, to give rise to important international controversies, some of which yet remain unadjusted. In order to grasp the meaning of these controversies, it is necessary at the outset clearly to understand just what was the point at issue. The word expatriation is often employed to denote merely the giving up of one's country, and more particularly one's native country, by a permanent change of abode; but, as used in diplomatic discussions, it signifies the change both of home and of allegiance, and

more especially of allegiance. By the laws of all civilized countries, provision is made for the admission of aliens to citizenship. The process by which this is done is called naturalization. What is the effect of this process? Does it confer upon the individual a new political character, without divesting him of that which he previously had, thus exposing him, unless his original sovereign consent to the change, to the conflicting claims of a dual allegiance? or does it of its own force not only invest him with a new allegiance, but also free him from the obligations of the old? By the laws of the United States the alien was required, at the time of his admission to citizenship, to forswear all allegiance to his former sovereign; and no inquiry was made as to whether that sovereign had, either by general or by specific permission, consented to the act. It might therefore be inferred that they were framed upon the theory that the individual possessed an absolute and unrestricted right to change his allegiance, without regard to the claims which his country of origin might assert, even within its own jurisdiction. This would, however, be a hasty inference, so far, at any rate, as the omission to inquire concerning the claims of prior allegiance is concerned. Other countries had naturalization statutes, by which no such inquiry was authorized; and yet those countries conceded to their own subjects the right of expatriation only with substantial

qualifications or not at all. While they granted naturalization, they did not claim that it dissolved the ties of prior allegiance and made its recipient an alien to his native country, without regard to the latter's laws on the subject. And we shall see that a long time elapsed before the United States advanced to the full assertion of this position in its diplomatic correspondence, and a still longer time before it embodied the claim in its legislation.

Nor is this surprising. The courts, and the most authoritative jurists, repeatedly expressed the opinion that the United States had inherited, as part of the common law, the English doctrine with regard to the change of allegiance. Chancellor Kent, reviewing in his *Commentaries* the decisions of the American courts, said that "the better opinion would seem to be, that a citizen cannot renounce his allegiance to the United States without the permission of government, to be declared by law," and that, as there was "no existing legislative regulation" on the subject, "the rule of the English common law" remained "unaltered." Mr. Justice Story, delivering in a certain case the judgment of the Supreme Court, laid down the general rule that individuals could not, "by any act of their own, without the consent of the government, put off their allegiance and become aliens"; while, in his work on the *Conflict of Laws*, he declared that every nation had "an exclusive right to regulate persons and things

within its own territory, according to its own sovereign will and public policy." To this general current of legal authority there was just one exception, and that was a decision rendered by the court of appeals of Kentucky, in 1839, a decision in which there seemed to breathe the free and untrammelled spirit of the West. In this case it was declared that expatriation might be "considered a practical and fundamental doctrine of America"; but the qualification was immediately added that "the political obligations of the citizen, and the interests of the Republic," might "forbid a renunciation of allegiance by his mere volition or declaration at any time, and under all circumstances," and that for this reason "the government, for the purpose of preventing abuse and securing public welfare," might "regulate the mode of expatriation." Even as thus qualified, Chancellor Kent expressed disapproval of the decision, and maintained not only that "the weight of American authority" was "in favor of the opposite doctrine," but also that the opposite doctrine was "founded . . . upon the most safe and reliable principles."

In the earlier diplomatic correspondence of the United States, we find no radical dissent from the views generally expressed by the courts. It is true that Jefferson, as Secretary of State, in a letter to Gouverneur Morris, minister to France, of August 16, 1793, said that citizens of the United States

were "certainly free to divest themselves of that character by emigration and other acts manifesting their intention," and might "then become the subjects of another power" and be "free to do whatever the subject of that power may do"; but this was far from saying that other countries were obliged to act upon the same doctrine. John Marshall, as Secretary of State, a few years later, in commenting upon the effects of naturalization, observed that no nation had a right to question its validity, "unless it be one which may have a conflicting title to the person adopted."

It is constantly stated that the United States maintained the right of expatriation in its controversies with Great Britain concerning the impressment of seamen. This is true, but only in a very limited sense. Taking the dispute over impressment as a whole, it did not involve the crucial point of the later controversies as to expatriation. The burden of the complaint in regard to impressment, as defined in Madison's war message of June 1, 1812, was that Great Britain sought, under cover of belligerent right, to execute her municipal law of allegiance on board the ships of other countries on the high seas, where no laws could operate "but the law of nations, and the laws of the country to which the vessels belong." Precisely the same position was maintained by Webster in his correspondence with Lord Ashburton in 1842. Ships on the high

seas are treated, for purposes of jurisdiction, as if they were part of the territory of the nation to which they belong. The complaint that the British government enforced the English law of allegiance on board American vessels on the high seas was manifestly a different thing from objecting to her enforcement of the same law within British jurisdiction.

A comprehensive examination of our unpublished diplomatic records enables me to say that the first Secretary of State to announce the doctrine of expatriation in its fullest extent—the doctrine that naturalization in the United States not only clothes the individual with a new allegiance but also absolves him from the obligations of the old—was James Buchanan. In an instruction to George Bancroft, then American minister in London, of December 18, 1848, Buchanan, referring to the duty of protecting American citizens, naturalized as well as native, said: "We can recognize no difference between the one and the other, nor can we permit this to be done by any foreign government, without protesting and remonstrating against it in the strongest terms. The subjects of other countries who from choice have abandoned their native land, and, accepting the invitation which our laws present, have emigrated to the United States and become American citizens, are entitled to the very same rights and privileges as if they had been born in the country.

To treat them in a different manner would be a violation of our plighted faith as well as our solemn duty." The same doctrine was asserted by Buchanan, in terms equally unequivocal, on prior occasions. As early as November 25, 1845, he informed an inquirer that the fact of his having become a citizen of the United States by naturalization entitled him "to the same protection from this government that a native citizen would receive."

Buchanan's innovation was not, however, accepted by any of his successors as Secretary of State till he himself became President. Webster, as Secretary of State under Fillmore, fully adopted the view expressed by the eminent American publicist, Wheaton, when minister to Prussia, that naturalization would entitle its recipient to protection everywhere but in his native country. Edward Everett, Webster's successor under Fillmore, held to the same opinion. Nor did any reversal of it take place when Pierce succeeded Fillmore, and that Democrat of Democrats, William L. Marcy, became Secretary of State. In an instruction to the American minister to Sardinia, of November 10, 1855, Marcy, while declaring that a naturalized citizen of the United States had all the rights of a native, went on to observe that the vindication of those rights could not require or authorize "an interference in his behalf with the fair application to him of the municipal laws of his native country when he voluntarily sub-

jects himself to their control in the same manner and to the same extent as they would apply if he had never left that country. A different view of the duties of this government would," added Marcy, "be an invasion of the independence of nations, and could not fail to be productive of discord; it might, moreover, prove detrimental to the interests of the States of this Union."

Views similar to these were expressed by Caleb Cushing, Attorney-General under Pierce, in 1856, in an opinion which he gave upon a question propounded by the Bavarian minister at Berlin as to the law in the United States. The results of an examination of judicial decisions, both Federal and State, Cushing summarized thus: "Expatriation a general right, subject to regulation of time and circumstances according to public interests; and the requisite consent of the state presumed where not negatived by standing prohibitions." Subject to "the conditions thus indicated," and to "such others as the public interest might seem to Congress to require to be imposed," he thought that the right of expatriation existed and might be freely exercised by citizens of the United States. He took occasion, however, to observe that opinion on the subject in the United States had always been "a little colored . . . by necessary opposition to the assumption of Great Britain to uphold the doctrine of indefeasible allegiance, and in terms to prohibit

expatriation. Hence," he continued, "we have been prone to regard it hastily as a question between kings and their subjects. It is not so. The true question is of the relation between the political society and its members, upon whatever hypothesis of right and in whatever form of organization that society may be constituted. The assumption of a natural right of emigration, without possible restriction in law, can be defended only by maintaining that each individual has all possible rights against the society and the society none with respect to the individual; that there is no social organization, but a mere anarchy of elements, each wholly independent of the other, and not otherwise consociated save than by their casual coexistence in the same territory."

A pronounced change in the tone and language of the government was now impending, and for reasons altogether intelligible. In March, 1857, Buchanan became President, and conditions were ripe for the further development of the position which he had taken as Secretary of State ten years before. For several decades after the formation of the government of the United States, the immigrant element of the population was comparatively unimportant. It is estimated that the whole number of immigrants from 1790 to 1820 was only about 250,000. During the twenties it continued to be small; but in the next decade it grew rapidly. In

the year 1842 the number reached 100,000. In 1846 there began the movement due to the Irish famine; and this movement, combined with bad times in Germany, produced in 1854 the enormous maximum of 427,833, which was not again reached till after the Civil War. In 1860 the foreign-born population of the United States was 4,138,697. In 1870 it was 5,567,229. Immigrants and the children of immigrants had come to form a large percentage of the country's citizenship. Such a condition of things inevitably produced an effect on the policy of the United States, just as it must have done on the policy of any other government founded on popular suffrage. The foreign-born citizen who desired to revisit the country of his origin, represented an interest so wide-spread and so powerful that its wishes could not be disregarded, no matter what the courts and publicists, or even what Secretaries of State, had said.

As the largest immigration prior to 1857 was from Ireland and the German states, controversies as to allegiance most frequently arose in those quarters. By the law of England, a British subject could not put off his natural allegiance except by act of Parliament, and of such an act there was no record. The law in Germany was more liberal. A Prussian subject, for example, might lose his allegiance in various ways, one of which was by living ten years in a foreign land. But this did not suffice to pre-

vent a collision, since the laws of the United States required for naturalization only a five years' residence, and sometimes less; and since, above all, in Prussia as well as in other European states, the discharge from allegiance was always subject to the performance of military duties, whether the individual had at the time of his emigration reached the age of actual service or not.

In 1859 the issue was broadly made. In February of that year a native of Hanover, named Christian Ernst, who had emigrated to the United States eight years before, at the age of nineteen, was admitted to citizenship; and in the following month he procured a passport and returned to Hanover on a visit. On arriving in his native village he was arrested and forced into the army. President Buchanan gave to the case his immediate personal attention, and submitted it to Judge Jeremiah S. Black, his Attorney-General, for an opinion. Judge Black's opinion bore the significant date of the 4th of July. He advised that it was the "natural right of every free person, who owes no debts and is not guilty of crime, to leave the country of his birth in good faith and for an honest purpose," and to throw off his natural allegiance and substitute another for it; that, although the common law of England denied this right, and "some of our own courts, misled by British authority, have expressed, though not very decisively, the same opinion," this was not to be

taken as settling the question; that "natural reason and justice, writers of known wisdom," and "the practice of civilized nations" were "all opposed to the doctrine of perpetual allegiance," and that the United States was pledged to the right of expatriation and could not without perfidy repudiate it; that expatriation "includes not only *emigration* out of one's native country, but *naturalization* in the country adopted as a future residence"; that "naturalization does *ipso facto* place the native and the adopted citizen in precisely the same relations with the government under which they live, except in so far as the express and positive law of the country has made a distinction in favor of one or the other"; that there was no law in the United States that made any difference between native and naturalized citizens with regard to protection abroad; that the opinion held by "persons of very high reputation," that a naturalized citizen ought to be protected everywhere except in the country of his birth, had "no foundation to rest upon . . . except the dogma which denies altogether the right of expatriation without the consent of his native country"; that, even assuming that Hanover had a municipal regulation by which the right of expatriation was denied to those of her subjects who failed to comply with certain conditions, and that this regulation was violated by Ernst when he came away, the unlawfulness of his emigration would not make his naturalization

void as against the King of Hanover; that, if the laws of the two countries were in conflict, the law of nations must decide the question upon principles and rules of its own; and that, "by the public law of the world we have the undoubted right to naturalize a foreigner, whether his natural sovereign consented to his emigration or not"; and, finally, that the government of Hanover could justify Ernst's arrest only by proving that the original right of expatriation depended upon the consent of the natural sovereign—a proposition which, said Judge Black, "I am sure no man can establish."

On July 8, 1859, the views of the President in relation to the case of Christian Ernst and analogous cases were communicated to Mr. Wright, American minister at Berlin, in a paper that at once acquired great celebrity. In this paper the views announced by Judge Black, which in reality were but a reiteration of those held by Buchanan as Secretary of State, were fully adopted. What right, it was asked, did the laws of the United States confer upon a foreigner by granting him naturalization? The answer was, all the rights, privileges, and immunities which belonged to a native citizen, except that of eligibility to the office of President. "With this exception," it was affirmed, "the naturalized citizen, from and after the date of his naturalization, both at home and abroad, is placed upon the very same footing with the native citizen. He is neither in a better

nor a worse condition . . . The moment a foreigner becomes naturalized, his allegiance to his native country is severed forever. He experiences a new political birth. A broad and impassable line separates him from his native country. He is no more responsible for anything he may say or do, or omit to say or do, after assuming his new character than if he had been born in the United States. Should he return to his native country, he returns as an American citizen, and in no other character. In order to entitle his original government to punish him for an offence, this must have been committed while he was a subject and owed allegiance to that government." This instruction was signed by Mr. Cass, but in its citations of the law of Pennsylvania, as well as in its sentiments and style, it bears Presidential ear-marks. On August 20, 1859, the Hanoverian government stated that a "full pardon" had been granted to Ernst, and that he had been "dismissed" from the military service, but added that similar conflicts could be prevented in the future only by the United States "renouncing its own views on the subject, which did not agree with international relations," or by concluding a special arrangement. President Buchanan, however, in his annual message of December 3, 1860, declared: "Our government is bound to protect the rights of our naturalized citizens everywhere to the same extent as though they had drawn their first breath in

this country. We recognize no distinction between our native and naturalized citizens."

The instruction to Mr. Wright was printed and issued by the Department of State in circular form, for the purpose of defining the position which the United States would in future maintain. It was so used by Seward, as Secretary of State, after Lincoln had succeeded Buchanan as President. But, as the Civil War grew more serious and the United States was forced to adopt a policy of conscription, Seward permitted the controversy to rest. Writing to Motley, who was then minister to Austria, on April 21, 1863, he adverted to the perplexities in which the United States had become involved by refusing, on the one hand, to exempt from its military service persons whom foreign powers claimed the right to protect, while demanding, on the other, the exemption of a like class from military service in the country of their origin on the ground of their having become citizens of the United States. The President had, he said, decided that it was not expedient in the crisis then existing to urge questions of the latter sort beyond the limits of an appeal to the good-will and friendly disposition of foreign powers. It was, besides, deemed necessary to discourage rather than encourage the return of naturalized foreigners to their native country, as well as the emigration of American citizens to Europe.

But, soon after the close of the war, Seward was

somewhat violently torn away from this position by the outbreak, in 1866, of the Fenian agitation, and the arrest in British jurisdiction of naturalized American citizens, natives of Ireland, for acts done in furtherance of that movement. Among the numerous cases of this kind, the most notable one, historically, was that of Warren and Costello, who were members of the discordant and ill-starred expedition on the brigantine *Jacmel* to the coast of Ireland, and who were afterwards tried and convicted at Dublin on a charge of treason-felony. At that time an alien charged with crime in British jurisdiction was by law entitled to be tried by what was technically called a jury *de medietate linguæ*—a jury composed half of British subjects and half of foreigners. Warren and Costello applied for such a jury, on the ground that they were American citizens. Had they been native citizens of the United States, their request would have been granted, but, as they were British subjects by birth, it was refused, the court citing Blackstone, Kent, and Story to show that their original allegiance still survived.

The trial and conviction of Warren and Costello, as well as of other prisoners, under these circumstances produced an excitement that, to borrow Seward's picturesque phrase, extended "throughout the whole country, from Portland to San Francisco and from St. Paul to Pensacola." Public meetings attended by immense crowds were held in

many cities, and resolutions were adopted calling upon the government for vigorous measures. In this agitation the leading spirit was William E. Robinson, then a member of Congress from Brooklyn, popularly known as "Richelieu" Robinson, "Richelieu" being the name under which he practised journalism. Robinson was a native of Ireland and an advocate of her independence, or, as he once declared in Congress, of her purchase and annexation by the United States. When in the latter part of 1867 Congress assembled, he at once brought up the subject of the Irish-American prisoners. He offered resolutions of inquiry looking to the impeachment of the American minister at London, and of the American consul at Dublin, for neglect of duty; and declared that unless every American citizen then confined in a British jail, against whom a charge of crime had not already been filed, should not on demand be instantly released, the American minister should "come home and breathe his native air, and be prepared to stand up like a man, and not be trembling all over like a jelly." As the minister thus described was no other than Charles Francis Adams, who, in the dark hours of the great American conflict, could quietly say to Earl Russell, with reference to the apprehended escape of "Lairds' Ironclads," "It would be superfluous in me to point out to your lordship that this is war," it is obvious that Mr. Robinson was a man of fancy,

though tastes will necessarily differ as to the quality of his wit. On a subsequent occasion he proposed a resolution, which was at once voted by the House of Representatives, requesting the President to obtain the release of Warren and Costello and "their return to our flag, with such ceremonies as are appropriate to the occasion." Warren and Costello were eventually released, but without special ceremonial incidents.

Meanwhile, the Committee on Foreign Affairs, spurred on by ninety-six resolutions and memorials that had been adopted at public meetings in different sections of the country, all demanding that action be taken to secure to citizens of the United States protection abroad, had been wrestling with various proposals designed to accomplish that end; and on January 27, 1868, the chairman, General Banks, brought in a bill, accompanied by an elaborate report. The report was both able and temperate. It pertinently declared that the claim of "indefeasible allegiance and perpetual service" was the symbol of "feudalism and force," but it also affirmed that "the law of allegiance and of service" was "as essential to a republic at it is to a monarchy," and that the "extinction of the mutual obligations between a government and its subject" should depend upon "the express or implied consent of both parties," under proper regulations. The bill was less carefully reasoned, and, after some

discussion, was recommitted. It was reported again, in a form much altered, on March 10th. In its new form it declared that the "right of expatriation" was "a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness," and that "any declaration, instruction, opinion, order, or decision," of any officer of the government, which denied, restricted, impaired, or questioned that right, was "inconsistent with the fundamental principles" of the government. It further provided that naturalized citizens of the United States should while abroad receive the same protection as native citizens in like circumstances; and empowered the President, whenever a citizen of the United States should be arrested and detained by a foreign government upon the allegation that naturalization in the United States did not operate to dissolve his original allegiance, to retaliate by arresting and detaining any subject of that government found within the national jurisdiction.

The bill, after discussion and amendment, passed the House on April 20, 1868, by a vote of 104 to 4, 81 members not voting. In the Senate it was referred to the Committee on Foreign Relations, from which it was reported by the chairman, Mr. Sumner, on June 23d, with two amendments, one of which struck out the provision for reprisals and made it the duty of the President, in cases of improper ar-

rest and detention, merely to report the facts to Congress. In the debate that ensued, Mr. Williams, of Oregon, moved to substitute for this amendment a clause making it the duty of the President, before reporting the facts to Congress, to use all means, not amounting to acts of war, to obtain the prisoner's release. This amendment was eventually adopted. The bill, as amended, passed the Senate on July 25, 1868, by a vote of 39 to 5, 20 Senators not voting. On the same day the amendments of the Senate were concurred in by the House, and on July 27th the bill, with the approval of the President, became a law.

An examination of the debates shows that the passage of the bill was greatly facilitated by two circumstances, which were repeatedly mentioned. One was that, while the bill was pending, both the great political parties held their national conventions and adopted declarations in favor of the equal protection of all citizens, both native and naturalized, at all times and in all places. The other was that George Bancroft had, with the kindly and powerful co-operation of Bismarck, concluded on February 22, 1868, with the North German Union his epoch-making naturalization treaty, which was soon followed by similar treaties with Baden and Bavaria, and by the promise or well-founded expectation of treaties with yet other powers, including Great Britain. Indeed, the principles of a

naturalization treaty with Great Britain were settled in a protocol signed in London as early as October 9, 1868, though they were not embodied in a formal convention till May 13, 1870, when Parliament had by an act of the preceding day adopted the necessary legislation. Before the close of 1872, naturalization treaties were made with Hesse (1868), Belgium (1868), Sweden and Norway (1869), Austria-Hungary (1870), Ecuador (1872), and Denmark (1872). Of all these treaties, however, that with Great Britain is the most liberal, since it recognizes the fullest possible effects of naturalization, whether American or British, whenever acquired, while all the rest make a five years' residence in the country of adoption a necessary condition of expatriation, even though naturalization should, as in some cases it may, be sooner obtained. The treaty with Great Britain is therefore the only one that meets the full exactions of the act of July 27, 1868; but they were all promptly ratified.

Since 1872 the government of the United States has earnestly and constantly striven to secure naturalization treaties with other powers, but its efforts have been rewarded only in the single and unimportant case of Hayti. For this failure there are several reasons, first among which we may mention the controversies that have arisen under the existing treaties, in consequence of the return to their native country, immediately after their nat-

uralization in the United States, of young men who emigrated just before arriving at the age when they were subject to military duty. While the number of such persons from year to year has been comparatively small, yet it has, as the volumes of diplomatic correspondence amply testify, been large enough to produce incalculable mischief. This unfortunate complication, which has in some instances put in jeopardy subsisting arrangements, has naturally served as an obstacle to the formation of new ones. Besides, the increasing pressure of the military system in Europe has made the non-treaty powers more and more reluctant to recognize the expatriation of any citizen or subject who has not performed the entire military service which the law prescribes. This tendency is clearly seen in the case of France, who, abandoning a less stringent rule formerly applied, now enforces her military laws upon Frenchmen naturalized abroad who were at the time of their naturalization subject to military service in the active army or in the reserve of that army. By the Italian civil code of 1866, citizenship of that country is lost by naturalization abroad, but it is expressly declared by the same code that this does not carry with it exemption from the obligation of military service or from the penalties inflicted on those who bear arms against their native country. Other countries, including Switzerland, have laws of similar purport; but the Swiss laws contain a

provision under which a native of that country may, if he sees fit to do so, renounce his natural allegiance. The most difficult case, however, to deal with is that of Russia, by whose laws any native of that country who enters a foreign service without the permission of his government, or takes the oath of allegiance to a foreign power, is exposed to the loss of all civil rights and perpetual banishment from the empire, or, in case of his unauthorized return to Russia, to deportation to Siberia. In addition to this, he is required to perform his term of military service. Turkey, prior to 1869, recognized the right of expatriation, but has since refused to do so. Referring to the situation thus created, President McKinley, in his annual message of December 5, 1899, said: "Our statutes do not allow this government to admit any distinction between the treatment of native and naturalized Americans abroad, so that ceaseless controversy arises in cases where persons, owing in the eye of international law a dual allegiance, are prevented from entering Turkey or are expelled after entrance. Our law in this regard contrasts with that of the European states. The British act, for instance, does not claim effect for the naturalization of an alien in the event of his return to his native country, unless the change be recognized by the law of that country or stipulated by treaty between it and the naturalizing state." It may be doubted whether this statement, so far as it relates to a

"dual allegiance," was made with full appreciation of its significance; for if it be admitted that an alien naturalized in the United States, as a result owes, under international law, a dual allegiance, it necessarily follows that the doctrine of voluntary expatriation has no foundation in international law. No one has ever contended that the naturalization of an alien is ineffective in the country in which it is granted. The only question that has existed is as to its effect in other countries, and especially in the country of origin. The doctrine embodied in the act of 1868 is that naturalization invests the individual with a new and single allegiance, and by consequence absolves him from the obligations of the old. The position of governments and of publicists who deny the American contention is that naturalization merely adds a new allegiance to the old, so that the individual becomes subject to a dual allegiance, and may be held to all the obligations of his original citizenship if he returns to his native country. The doctrine of dual allegiance is, in a word, the precise test the acceptance of which distinguishes those who reject the doctrine of voluntary expatriation from those who support it.

But, quite apart from conditions existing in other countries, it would be uncandid not to admit that the failure of the United States since 1872 to extend the operation of the doctrine of expatriation may in a measure be ascribed to certain acts that have

seemed to discredit the declarations made in the act of 1868. By the naturalization laws of the United States prior to 1870, admission to citizenship was restricted to "free white" persons. By the act of July 14, 1870, Congress, after the adoption of the Thirteenth and Fourteenth Amendments to the Constitution, changed the laws so as to embrace persons of "African" nativity or descent. While this act was under discussion in Congress, Senator Sumner made repeated efforts to strike from the laws the word "white," but in this he was unsuccessful. In the preparation of the Revised Statutes of the United States, the word "white" was omitted, but by the act of February 18, 1875, Congress corrected this omission by expressly restricting the right of naturalization to "white" persons and to persons of "African" nativity or descent. This legislation, under which Chinese, Japanese, and persons of various other races, being neither "white" nor "African," have been held to be incapable of naturalization in the United States, necessarily impaired the moral if not the legal authority of the act of 1868. The act of 1868 declared expatriation to be "a natural and inherent right of all people," and the right of expatriation, as correctly held by Judge Black, includes both emigration and naturalization. It is obvious therefore that the right of expatriation is only imperfectly recognized where people, not individually because of misconduct, but

in the mass because of their race, are excluded from naturalization. Some of the very words of the act of July 27, 1868, declaratory of the right of expatriation, were embodied on the following day in the treaty with China, commonly called the Burlingame treaty.

By the act of Congress of June 29, 1906, which has been only slightly amended by subsequent legislation, important changes were made in the laws relating to naturalization in the United States. The process was made far more stringent than it had been. As the result of the provision that, while the petition for admission to citizenship must be accompanied with proof that the applicant has resided in the United States at least five years, final action on it cannot be taken till at least ninety days after it is filed and publicly posted, the normal period of residence was in effect extended from five years to five years and three months. Nor may a certificate of naturalization be issued within thirty days preceding the holding of a general election. The candidate must file his petition not more than seven years after making his declaration of intention, which otherwise ceases to be effective. The petition must also be signed by him in his own handwriting, and the hearing upon it must be held in open court before the judge or judges. The applicant, except in certain specified cases, must be able to speak the English language. Polygamists or believers in the practice of polygamy are excluded from admission to citizen-

ship. So also are persons disbelieving in or opposed to organized government, or belonging to or affiliated with organizations entertaining and teaching such disbelief or opposition, as well as persons who advocate or teach "the duty, necessity, or propriety of the unlawful assaulting or killing" of an officer or officers, either specifically or generally, "of the government of the United States, or of any other organized government, because of his or their official character." Power is expressly given for the cancellation of certificates improperly obtained. A bureau of naturalization is established at Washington, where certified copies or duplicates of naturalization records are kept. It is further provided that where a person shall, within five years after his naturalization, return to his native country, or go to any other foreign country, and take up there a "permanent residence," this shall be considered presumptive evidence that he did not, when he filed his application, intend to become "a permanent citizen of the United States," and shall, in the absence of countervailing evidence, authorize the cancellation of his certificate as fraudulent. The diplomatic and consular officers of the United States are required to co-operate in the enforcement of this provision by reporting the names of any such persons within their respective jurisdictions.

Important changes were also made by the act of March 2, 1907, in the law relating to the expatriation of citizens of the United States and their protection

abroad. Such expatriation is declared to be effected either by naturalization abroad or by the taking of an "oath of allegiance" to any foreign state. In the case of a "naturalized citizen," however, residence of two years in the state from which he came, or of five years in any other foreign state, creates a presumption that he "has ceased to be an American citizen." This presumption may be overcome by proof. It is explicitly provided that "no American citizen shall be allowed to expatriate himself when this country is at war." The act further expressly provides that an American woman marrying a foreigner takes the nationality of her husband; but that, when the marital relation ends, she may "resume" her American citizenship, if she is abroad, either by registering within a year as an American citizen at an American consulate or by returning to the United States to reside, or, if she is already in the United States, by continuing to reside there. Conversely, if a foreign woman married to an American continues, after the marital relation ends, to reside in the United States, she is assumed to retain her adoptive citizenship, unless she renounces it before a competent court; but, if she is residing abroad, she is permitted to retain it by registering within a year at an American consulate.

The act of 1907, contrary to previous well-considered legislation, contains a novel provision for the issuance of passports, under certain conditions and limitations, to persons who are not citizens of the

United States, but who have only declared their intention to become so. The conditions and limitations are (1) that the declarant must have resided in the United States for three years, (2) that the passport is good for only six months, (3) that it cannot be renewed, and (4) that it does not entitle the holder to the protection of the United States in the country of which he was a citizen when he made his declaration of intention. It is superfluous to point out that this clause recognizes the fact that the holder is not entitled to the rights of a citizen of the United States. It is equally obvious that even the third country in which he happened to be might decline to recognize any protective claim of the United States, especially as against a claim of the country whose citizenship he has not yet renounced, and that in taking such a position, such third country might at least argumentatively invoke the stipulation, usually found in the naturalization treaties of the United States, that "the declaration of an intention to become a citizen of the one or the other country has not for either party the effect of naturalization."

In truth, much confusion in the discussion of this subject has resulted from the supposition that, in making the declaration of intention to become a citizen, the declarant is required to forswear, and in fact does forswear, his allegiance to the government of the country from which he came. Not only is this a popular supposition; it has even found expression now and then in official documents. But it

is quite destitute of foundation. In this respect it may be classed with the impression which has widely prevailed, and of which traces also may now and then be found in official documents, that the United States has on some occasions contended that a declaration of intention to become a citizen clothed the individual with American nationality and gave him the same right to protection abroad as if he had been naturalized. This impression is altogether erroneous, and is directly opposed to the positive declarations of a long line of Secretaries of State, including Buchanan, Marcy, Cass, Fish, Evarts, Frelinghuysen, Bayard, Blaine, Olney, Hay. The Department of State, in issuing passports, exacted proof of citizenship. In 1856 this rule was enacted into law; and, save a guarded relaxation from 1863 to 1866 for declarants subject to military duty, it remained till 1907 unmodified, except that those whom Congress after 1898 declared to be "citizens" of certain insular possessions and so entitled to protection, received passports in that character. But their national allegiance to the United States was undivided. The erroneous impression with regard to the effect of a declaration of intention seems to have grown out of a popular misconception of the case of Martin Koszta, in which Marcy is supposed to have maintained that by such a declaration an alien acquired American nationality. Marcy, however, took no such ground. The only purpose for which he referred to Koszta's declaration of intention was that of showing that

Koszta was domiciled in the United States. He did maintain that a person's domicil, by which is meant his permanent home, may in certain relations invest him with a nationality. But even in this regard the position of Marcy has been much misapprehended. A brief explanation of the case will conduce to a clearer understanding of it.

Martin Koszta, a Hungarian by birth and an Austrian subject, was an active participant in the Hungarian revolution of 1848–49. At its close he, with many others, took refuge in Turkey. Their extradition was demanded by Austria but was resisted by Turkey, backed up by England and France; and they were at length released on the understanding that they would go into foreign parts. Many of them emigrated to the United States. Among these was Koszta, who, on July 31, 1852, declared his intention to become a citizen. Nearly two years later he temporarily returned, on private business, to Turkey, and placed himself under the protection of the American consul at Smyrna, by whom he was furnished with a tezkereh, a kind of passport or safe-conduct given by foreign consuls in Turkey to persons whom they assume to protect. While waiting for an opportunity to return to the United States, Koszta was seized and thrown into the sea, where he was picked up by a boat's crew, lying in wait for him, and taken on board the Austrian man-of-war *Huszar*, where he was confined in irons. It

afterwards transpired that his seizure was instigated by the Austrian consul-general at Smyrna, and that the Turkish officials had refused to grant any authority for the purpose. The American consul at Smyrna and the American *chargé d'affaires* at Constantinople sought to effect his liberation, but in vain. Just then, however, the American sloop-of-war *St. Louis* arrived at Smyrna, and her commander, Captain Ingraham, after inquiring into the circumstances of the case, demanded Koszta's release, and intimated that he would resort to force if the demand was not complied with by a certain hour. An arrangement was then made by which Koszta was delivered into the custody of the French consul-general, until the United States and Austria should agree as to the manner of disposing of him.

When a report of the transaction was received at Washington, Marcy justified Captain Ingraham's conduct, chiefly on the ground that Koszta, while at Smyrna, had, according to the local custom, which was recognized by international law, the right, as a Frank or sojourner, to place himself under any foreign protection that he might select; that he did in fact place himself under the protection of the American consul at Smyrna; and that, having thus been clothed with the nationality of the protecting power, he became entitled to be regarded while in that situation as a citizen of the United States. These views Marcy afterwards elaborated in his an-

swer to the protest lodged by Austria against Captain Ingraham's action. The links in Marcy's chain of reasoning, in this celebrated paper, were that, as the seizure and rescue of Koszta took place within the jurisdiction of a third power, the respective rights of the United States and of Austria, as parties to the controversy that had arisen concerning that transaction, could not be determined by the municipal law of either country, but must be determined by international law; that, as the previous political connection between Koszta and the Austrian government had, by reason of the circumstances of his emigration and banishment, been, even under the laws of Austria, dissolved, he could not at the time of his seizure be claimed as an Austrian subject, nor could his seizure as such be justified by Austria, either under international law or her treaties with Turkey; that the seizure in its method and circumstances constituted an outrage so palpable that any by-stander would have been justified, on elementary principles of justice and humanity, in interposing to prevent its consummation; that there were, however, special grounds on which the United States might, under international law—that being under the circumstances the only criterion — assert a right to protect Koszta; that, although he had ceased to be a subject of Austria, and had not become a citizen of the United States, and therefore could not claim the rights of a citizen

under the municipal laws of either country, he might under international law derive a national character from domicil; that even if Koszta was not by reason of his domicil invested with the nationality of the United States, he undoubtedly possessed, under the usage prevailing in Turkey, which was recognized and sanctioned by international law, the nationality of the United States from the moment when he was placed under the protection of the American diplomatic and consular agents and received from them his tezkereh; that, as he was clothed with the nationality of the United States, and as the first aggressive act was committed by the procurement of the Austrian functionaries, Austria, if she upheld what was done, became in fact the first aggressor, and was not entitled to an apology for the measures adopted by Captain Ingraham to secure his release; that Captain Ingraham's action was further justified by the information which he received of a plot to remove Koszta clandestinely, in violation of the amicable arrangement under which he was to be retained at Smyrna while the question of his nationality was pending; and finally, that, as the seizure of Koszta was illegal and unjustifiable, the President could not consent to his delivery to the Austrian consul-general at Smyrna, but expected that measures would be taken to cause him to be restored to the condition he was in before he was seized.

THE DOCTRINE OF EXPATRIATION

On October 14, 1853, the American consul and the Austrian consul-general at Smyrna, acting under instructions from the American and Austrian ministers at Constantinople, requested the French consul-general to deliver Koszta over into the custody of the United States; and on the same day Koszta took passage on the bark *Sultana* for Boston.

References:

For documents and discussions relating to the historical and legal development of the Doctrine of Expatriation, see Moore's *Digest of International Law*, III, 552, *et seq.*

As to the doctrine of double nationality, or double allegiance, see *id.*, 518 *et seq.*

VIII

INTERNATIONAL ARBITRATION

ALTHOUGH the independence of the United States was won by the sword, the founders of the American Republic were accustomed to look upon war as a measure that could be justified only as a choice of evils. Standing armies and elaborate preparations for war they deprecated as a menace to liberty. Having proclaimed as the basis of their political system the consent of the governed, they cherished as their ideal a peaceful nation, always guided by reason and justice. In order that this ideal might be attained, they perceived the necessity of establishing international relations on definite and sure foundations. To that end they became ardent expounders of the law of nations; and their predilection for legal methods naturally found expression in the employment of arbitration for the settlement of international differences.

By arbitration we mean the determination of controversies by international tribunals judicial in their constitution and powers. Arbitration is not to be confounded with mediation. Mediation is an

advisory, arbitration a judicial, process. Mediation recommends, arbitration decides. And while it may be true that nations have for this reason sometimes accepted mediation when they were unwilling or reluctant to arbitrate, yet it is also true that they have settled by arbitration questions which mediation could not have adjusted. It is, for instance, hardly conceivable that the question of the *Alabama* claims could have been settled by mediation. The same thing may be said of many boundary disputes. The importance of mediation, as one of the forms of amicable negotiation, should not, indeed, be minimized. A plan of mediation even may, as in the case of The Hague convention for the peaceful settlement of international disputes, form a useful auxiliary to a system of arbitration; but the fact should nevertheless be understood that the two processes are fundamentally different, and that, while mediation is only a form of diplomacy, arbitration consists in the application of law and of judicial methods to the determination of international disputes.

The government of the United States had been in existence only five years, when it found occasion to employ arbitration for the settlement of serious differences with the mother-country. Important provisions of the treaty of peace remained unexecuted. Various posts along the northern frontier were still held by the British forces, and the British govern-

ment refused to evacuate them because of the failure of the United States to render effectual the engagement that British creditors should meet with no lawful impediment to the recovery of their confiscated debts. Moreover, almost immediately after the ratification of the treaty of peace, a question arose as to what was the "River St. Croix," which was to form the eastern boundary of the United States in its course northward from the Bay of Fundy. Such a river appeared on the map used by the negotiators of the treaty, but no stream answering to the name was afterwards found. The uncertainty as to the boundary was embarrassing, while the controversy as to the surrender of the posts and the recovery of debts formed a prolific source of irritation. But a still more acute cause of quarrel arose when, in 1793, the governments of France and Great Britain began to fulminate and enforce measures invasive of the rights of neutral trade. The situation then became so tense that, apparently as the only alternative to measures of force, Washington decided to send a special mission to England. John Jay, who was chosen for that delicate task, submitted his first formal representations to Lord Grenville on July 30, 1794. In the treaty concluded on the 19th of the following November, provision was made for three arbitrations. The first of these related to the boundary question; the second, to the claims on account of confiscated

debts; the third, to the subject of neutral rights and duties.

The boundary question was referred to a mixed commission of three persons, which met at Halifax, Nova Scotia, on August 30, 1796, and rendered its award at Providence, Rhode Island, on October 25, 1798, holding that the Schoodiac, or Schoodic, was the river intended under the name of the St. Croix.

The claims of British subjects, on account of the impediments which they had encountered in their efforts to collect in the State courts their confiscated debts, were referred to a mixed commission of five persons, which met at Philadelphia in May, 1797. The proceedings of this body were inharmonious, and its sittings were suspended on July 31, 1798, by the withdrawal of the two American members. Differences of opinion on questions of law were to be expected, but the discussions at the board also developed personal feeling. This appears to have been largely due to the action of Mr. Macdonald, one of the British commissioners, a gentleman who no doubt deserved all the commendations bestowed upon him at the time of his appointment for rectitude and good-will, but who seems unfortunately to have possessed a sense of duty unmitigated by a sense of proportion. Wishing to be entirely candid with his associates, he made it a rule freely to acquaint them with all his opinions; and he adopted the practice of presenting to the board, when it was

not otherwise occupied, memoranda expressive of his views. The final rupture was caused by his submitting a resolution which declared that from the beginning of the Revolution down to the treaty of peace the United States, whatever may have been their relation to other powers, stood to Great Britain in an attitude of rebellion. As it has always been the doctrine of the United States that the treaty of peace did not grant their independence, but merely recognized it as a condition existing from July 4, 1776, the date of its declaration, the American commissioners regarded the resolution as gratuitously offensive and withdrew. The claims which the commission failed to adjust were settled by a treaty concluded January 8, 1802, under which the British government accepted the sum of £600,000 in satisfaction of its demands.

But the most important, as well as the most interesting, of the arbitral tribunals under the Jay treaty, was that which sat at London for the purpose of disposing of American claims against Great Britain on account of captures made under the orders in council, and of British claims against the United States on account of the latter's failure completely to enforce its neutrality. The membership of this board was worthy of the great questions submitted to its determination. The American commissioners were Christopher Gore, who, although popularly known as the legal preceptor of Daniel

Webster, achieved an eminence of his own; and William Pinkney, of Maryland, who, besides winning distinction in diplomacy and statesmanship, was the acknowledged leader of the American bar of his time. The British commissioners were Sir John Nicholl, an eminent civilian, who was afterwards succeeded by Maurice Swabey; and John Anstey. The fifth commissioner was Colonel John Trumbull, of Connecticut, who had accompanied Jay to England when he negotiated the treaty. The mode by which Trumbull was chosen is worthy of mention. The treaty provided that in case the four commissioners, two of whom were to be appointed by each government, could not agree upon the fifth, he should be chosen by lot. In execution of this stipulation, the commissioners on each side presented to the others a list of four persons; but, as neither side would yield, it became necessary to resort to the casting of lots. The next step, according to common practice, would have been for each side to place in the urn a name of its own independent selection, with the chances in favor of his being a partisan. But at London each side selected its name from the list of four made out by the other with a view to a mutual agreement, and the result was that a well-disposed man became the fifth commissioner.

The board had not been long in session when a serious controversy arose as to its power to deter-

mine its own jurisdiction in respect of the several claims presented for its decision. The division of opinion was so pronounced that for a time the British commissioners absented themselves from the meetings, but the difficulty was eventually submitted to Lord Chancellor Loughborough, who ended it by declaring "that the doubt respecting the authority of the commissioners to settle their own jurisdiction was absurd, and that they must necessarily decide upon cases being within or without their competency."

Important questions of law came before the commissioners in relation to contraband, the rights of neutrals, and the finality of the decisions of prize courts. These were all discussed with marked ability, especially by Pinkney. His opinions as a member of the board Wheaton justly pronounced to be "finished models of judicial eloquence, uniting powerful and comprehensive argument with a copious, pure, and energetic diction"; and they are almost all we possess in a complete and authentic form of the legal reasoning of the great master by whom they were delivered. The sessions of the board were brought to a close on February 24, 1804, all the business before it having been finished. There was, however, an interruption in its proceedings from July 30, 1799, to February 15, 1802, pending the diplomatic adjustment of the difficulty caused by the breaking up of the commission at Philadelphia.

By reason of the fact that the proceedings of the London commission for a century remained unpublished, its labors have not received from writers the attention which they deserve. It was estimated that, through the operation of the stipulations under which the commissioners sat, American claimants recovered from the British government the enormous sum of $11,650,000. "The whole of this sum," says Trumbull, "was promptly and punctually paid to each claimant, or his assignee; for, after a careful and accurate examination of the merits of every case of complaint, the awards of the board were made in favor of each individual, in the form of an order to pay, and payable at the treasury of Great Britain; nor do I recollect even to have heard a single complaint, of the delay of an hour, in any instance of an award presented for payment." The aggregate of the awards against the United States appears to have been $143,428.14; but although this amount was relatively small, its payment established the principle that a government is liable in damages for neglect to perform its neutral duties, and thus laid the foundation of the award made in 1872 at Geneva.

Since the close of the arbitral proceedings under the Jay treaty, arbitration has, except in the case of the extraordinary train of events that led up to the war of 1812, been almost habitually employed by the United States and Great Britain for the set-

tlement of controversies that could not be adjusted by negotiation. Like the Jay treaty, the treaty of Ghent, of December 24, 1814, which restored peace between the two countries, provided for three arbitrations. The first related to the ownership of certain islands in Passamaquoddy Bay and the Bay of Fundy; the second, to the ascertainment of the boundary of the United States from the source of the river St. Croix to the river St. Lawrence; the third, to the determination of the boundary along the middle of the Great Lakes and of their water communications to the most northwestern point of the Lake of the Woods. In 1818, a difference as to the performance by Great Britain of her obligation under the treaty of Ghent, not to carry away from United States territory then in her possession "any slaves or other private property," was referred to the Emperor of Russia. He rendered a decision in favor of the United States, and in 1822 a mixed commission was erected in order to fix the amount to be paid. In 1827 a dispute as to the northeastern boundary was referred to the King of the Netherlands; but as his award was recommendatory rather than decisive, both governments agreed to waive it, and the question was settled by the Webster-Ashburton treaty. In 1853 a convention was entered into for the settlement by means of a mixed commission of all outstanding claims. The commission sat in London, and disposed of many important

controversies, including the celebrated case of the *Creole*, which so nearly caused a rupture of relations in 1842. For the peculiarly satisfactory results of the board's labors, credit was perhaps chiefly due to the umpire, Joshua Bates, an American by birth, but then the head of the house of the Barings, who exhibited in his decisions the same broad intelligence and sound judgment as had characterized his exceptionally successful career in business. By the reciprocity treaty of 1854, by which the troubles as to the northeastern fisheries were temporarily allayed, arbitration was employed for the purpose of determining what fisheries were exclusively reserved to the inhabitants of the two countries under the agreement. In 1863 another arbitral board was erected for the purpose of deciding upon the claims of the Hudson's Bay Company and the Puget's Sound Agricultural Company against the United States for damages to their property and rights in connection with the treaty of 1846, by which the limits between the United States and the British possessions west of the Rocky Mountains were established.

This board was still in session when the relations between the United States and Great Britain were seriously disturbed by the controversies growing out of the civil war, the northeastern fisheries, and the disputed San Juan water boundary. These differences were all composed by the great treaty signed

at Washington on May 8, 1871, on the part of the United States by Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer Rockwood Hoar, and George H. Williams; on the part of Great Britain, by the Earl de Grey and Ripon, Sir Stafford H. Northcote, Sir Edward Thornton, Sir John A. Macdonald, and Mountague Bernard. This treaty provided for four distinct arbitrations, the largest number ever established under a single convention, and, by reason of this fact as well as of the magnitude of the questions submitted, was undoubtedly the greatest treaty of arbitration that the world had ever seen.

Of the four arbitrations for which it provided, the first in order and in importance was that at Geneva. On the part of the United States, the arbitrator was Charles Francis Adams; on the part of Great Britain, Sir Alexander Cockburn. There were three other arbitrators, Count Frederic Sclopis, a distinguished jurist; Jacques Staempfli, afterwards President of Switzerland; and the Viscount D'Itajuba, an eminent diplomatist, respectively designated by the King of Italy, the President of the Swiss Confederation, and the Emperor of Brazil. The American agent was J. C. Bancroft Davis; the British agent, Lord Tenderden. Caleb Cushing, William M. Evarts, and Morrison R. Waite appeared as counsel for the United States. Sir Roundell Palmer, afterwards Lord Selborne, appeared for

Great Britain, assisted by Mountague Bernard and Mr. Cohen.

The demands presented by the United States to the tribunal, arising out of the acts of Confederate cruisers of British origin, and generically known as the *Alabama* claims, embraced (1) direct losses growing out of the destructions of vessels and their cargoes by such cruisers, (2) the national expenditures in pursuit of the cruisers, (3) the loss for the transfer of the American commercial marine to the British flag, (4) the enhanced payments of insurance, and (5) the prolongation of the war and the addition of a large sum to its cost. As to classes 3, 4, and 5, Great Britain denied the jurisdiction of the tribunal; but without deciding this question, the tribunal disposed of these three classes by expressing an opinion that they did not, upon the principles of international law, constitute a good foundation for an award of compensation, and that they should be excluded from consideration, even if there were no difference between the two governments as to the board's competency. In regard to the second class of claims, the tribunal held that they were not properly distinguishable from the general expenses of the war carried on by the United States; and further, by a majority of three to two, that no compensation should be awarded to the United States on that head. On claims of the first class, the tribunal awarded the sum of $15,500,000.

Its first session was held December 15, 1871; its last, September 14, 1872.

The dispute as to the San Juan water boundary was submitted to the German Emperor, who rendered, on October 21, 1872, an award in favor of the United States. Claims of British subjects against the United States, and of citizens of the United States against Great Britain (other than the *Alabama* claims), arising out of injuries to persons or property during the civil war in the United States, from April 17, 1861, to April 9, 1865, were referred to a mixed commission, which sat in the United States. The fourth arbitration under the treaty of Washington, to determine the compensation, if any, due to Great Britain for privileges accorded by the treaty to the United States in the northeastern fisheries, was conducted by a commission of three persons—a citizen of the United States, a British subject, and a Belgian—which met at Halifax, June 15, 1877, and on the 23d of the following November awarded to Great Britain (the American commissioner dissenting) the sum of $5,500,000.

Questions of great moment, as affecting the free use of the seas, were involved in the fur-seal arbitration, which was held in Paris under the treaty of February 29, 1892; and eminent men were chosen to discuss and decide them. On the part of the United States, the arbitrators were John M. Harlan,

of the Supreme Court, and John T. Morgan, of the Senate; on the part of Great Britain, Lord Hannen, of the High Court of Appeal, and Sir John Thompson, Minister of Justice and Attorney-General of Canada. The neutral arbitrators were the Baron Alphonse de Courcel, a senator and ambassador of France; the Marquis Emilio Visconti Venosta, a senator of Italy, who had held the post of Minister of Foreign Affairs; and Gregers Gram, a Minister of State of Sweden. The American agent was John W. Foster; the British agent, Sir Charles H. Tupper. As counsel for the United States, there appeared Edward J. Phelps, James C. Carter, Henry W. Blodgett, and Frederic R. Coudert; for Great Britain, Sir Charles Russell, Sir Richard Webster, and Christopher Robinson. The award which, so far as questions of jurisdiction were concerned, was unfavorable to the United States, is conceded to have been based upon existing rules of international law, the tribunal deeming its duties to be judicial rather than legislative. The commission, however, under powers expressly conferred upon it, prescribed regulations for the protection of the fur-seals by joint action. The claims of British subjects for the previous seizure of their vessels by American cruisers in Bering Sea were afterwards adjusted by a mixed commission.

The proceeding of 1903, by which the Alaskan boundary dispute was settled, can scarcely be classed

as an arbitration, since the tribunal, which contained an equal number of the citizens or subjects of each contracting party, was unable to render a decision unless an appointee of one government should give his decision in favor of the other. This proved in the particular instance to be possible, Lord Alverstone (formerly Sir Richard Webster), Chief-Justice of England, one of the British members, having given the highest proof of the independence and impartiality of the British bench by joining in a decision favorable to the United States. I do not hesitate to say this, although it has been insinuated both in Canada and in the United States that Lord Alverstone accepted a place on the commission with at least the tacit understanding that he was to decide in favor of the United States, thus ending a troublesome controversy. Lord Alverstone did not shrink from denouncing this insinuation when it first appeared; and this denunciation he repeated in his autobiography, in which he affirms that he acted "purely in a judicial capacity" and was influenced solely by a sense of duty to his position. In reality, the Canadian contentions in regard to the Alaskan boundary fundamentally lacked merit, and, like those of the United States in the fur-seal arbitration, derived color chiefly from the fact that a government was willing to take the chance of presenting them.

We have elsewhere mentioned the termination of the age-long dispute between the United States and Great Britain as to the north Atlantic fisheries by the

award of the Permanent Court at The Hague in 1910.

Down to 1898, when the controversy as to Cuba was at length settled by the sword, all differences between the United States and Spain, which could not be adjusted by diplomacy, were, beginning with the mixed commission under the Pinckney-Godoy treaty of 1795, settled by arbitration. The most important of the arbitral tribunals between the two countries was that which was established under the diplomatic agreement of February 11–12, 1871, touching claims growing out of the insurrection in Cuba. There were two other arbitrations between the two countries, held respectively in 1870 and 1880.

As between the United States and France, many important questions, including large pecuniary claims, have been settled by direct negotiation. But from November, 1880, to March, 1884, a mixed commission, sitting in Washington, disposed of the claims of citizens of France against the United States for injuries to their persons and property during the American Civil War, and of the claims of citizens of the United States against France for injuries during the war between that country and Germany.

On various occasions, as under the treaties of 1839 and 1868, arbitrations have been held between the United States and Mexico. The claims submitted under the treaty of 1868 were remarkable both in number and in amount, those presented by the United States aggregating one thousand and

seventeen, and those by Mexico nine hundred and ninety-eight, while the total amount claimed on one side and the other exceeded half a billion dollars. The total amount allowed was, however, about $4,250,000. Two of the awards against Mexico, which embraced nearly or quite a third of the total amount awarded against her, were alleged to have been procured by fraudulent testimony. The government of the United States investigated this allegation, and eventually returned to Mexico all the money that had been paid by her on the awards in question, even paying out of its own treasury such part as had already been distributed among the claimants.

Arbitrations have also been held by the United States with Colombia, Costa Rica, Denmark, Ecuador, Haiti, Nicaragua, Paraguay, Peru, Portugal, Salvador, Santo Domingo, Siam, and Venezuela. The total number of the arbitrations of the United States down to 1914 was sixty-eight, twenty-two of which were with Great Britain, while the President of the United States had acted as arbitrator between other nations in five cases, and ministers of the United States, or persons designated by the United States, had acted as arbitrator or umpire in nine cases. The number of the arbitrations of the United States during that period was equalled only by those of Great Britain, the total of which appears to have been about the same.

In adopting arbitration as a means of settling its

disputes the government of the United States has no doubt been influenced by the manifestation in various forms of public sentiment in favor of that method. As early as February, 1832, the senate of Massachusetts, by a vote of 19 to 5, resolved that "some mode should be established for the amicable and final adjustment of all international disputes instead of resort to war"; and in 1837 a like resolution was passed by the house of representatives unanimously. Similar declarations were adopted by the legislatures of other States. In 1874 a resolution in favor of general arbitration was passed by the House of Representatives of the United States.

On November 29, 1881, Mr. Blaine, as Secretary of State, extended, in the name of the President, an invitation to all the independent countries of North and South America to participate in a general congress to be held in Washington on November 24, 1882, "for the purpose of considering and discussing methods of preventing war between the nations of America." Action upon this proposal was postponed chiefly because of the continuance of the Chile-Peruvian war, but the project was never entirely relinquished, and on May 28, 1888, the President gave his approval to the act under which was convoked the International American Conference of 1889–1890. Of this conference one of the results was the celebrated plan of arbitration adopted April 18, 1890. By this plan it was declared that arbitration, as a means of settling disputes between American

republics, was adopted "as a principle of American international law"; that arbitration should be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction, and enforcement of treaties; and that it should be equally obligatory in all other cases, whatever might be their origin, nature, or object, with the sole exception of those which, in the judgment of one of the nations involved in the controversy, might imperil its independence; but that even in this case, while arbitration for that nation should be optional, it should be "obligatory upon the adversary power." As yet this plan represents but an aspiration, since it failed to receive the approval of the governments whose representatives adopted it.

On February 14, 1890, the Senate of the United States, and on the 3d of the following April the House of Representatives, adopted a concurrent resolution by which the President was requested to invite, from time to time as fit occasions might arise, negotiations with any government with which the United States maintained diplomatic relations, "to the end that any differences or disputes arising between the two governments which cannot be adjusted by diplomatic agency may be referred to arbitration, and be peaceably adjusted by such means." On July 16, 1893, the British House of Commons formally declared its cordial sympathy with the pur-

pose of this resolution, and expressed the hope that her Majesty's government would "lend their ready co-operation to the government of the United States" upon the basis indicated.

Nothing tangible had been accomplished in that direction when the controversy over the Venezuelan boundary disclosed the importance of arbitration as a possible means of avoiding a conflict between the two countries. Under these circumstances, Mr. Olney, as Secretary of State, negotiated with Sir Julian Pauncefote, then British ambassador at Washington, concurrently with the negotiation of a special treaty of arbitration for the settlement of the Venezuelan question, a general arbitration treaty. By this treaty, provision was made for three classes of tribunals, two of which were to be boards of three or five members, as the case might be, while the third was to be, not in strictness a tribunal of arbitration, but a joint commission, in the form lately employed in the Alaskan boundary dispute, specifically to deal with territorial claims. This treaty failed to receive the approval of the necessary two-thirds of the Senate, but only by a few votes.

In the peace conference that met at The Hague, in 1899, on the invitation of the Czar of Russia, the United States was one of the participants. Of this conference, the most notable achievement was the convention for the peaceful adjustment of international differences. This convention embraces stipulations, first, as to mediation, and secondly, as

to arbitration. In the part relating to mediation, the signatory powers agree that, in case of "grave difference of opinion or conflict," they will, before appealing to arms, have recourse, "as far as circumstances permit," to the good offices of one or more friendly powers, and that such powers even may of their own motion offer mediation, without incurring the odium of performing an unfriendly act. The functions of the mediator are, however, declared to be purely conciliatory, and his recommendations "advisory" and not "obligatory." As an adjunct to the system of mediation the convention recommends in certain cases the appointment of an international commission of inquiry, the mode of whose appointment, as well as its jurisdiction and procedure, is to be regulated by a special convention between the disputing states.

By the arbitral stipulations, the object of international arbitration is declared to be "the settlement of disputes between nations by judges of their own choice and in accordance with their reciprocal rights"; and arbitration is recognized as specially applicable to questions of law, and of the interpretation and execution of treaties, which cannot be settled by diplomacy. The resort to arbitration is voluntary, but the convention furnishes a plan by which it is intended to be systematized and made easy. Of this plan the basal feature is what is called the permanent court of arbitration, which is constituted by the designation by each of the sig-

natory powers of not more than four persons "recognized as competent to deal with questions of international law, and of the highest personal integrity." The persons so designated, who are known as "members of the court," constitute a list from which any of the signatory powers, in the event of a controversy, may, if they see fit to do so, choose a tribunal for the decision of the particular case.

To the existence of this convention there is, no doubt, to be ascribed the remarkable agreement between Great Britain and Russia for the settlement, by means of a mixed court of inquiry, of the Dogger Bank incident.

The subject of general arbitration between American nations, which remained in abeyance after the Washington conference of 1890, was again taken up by the Second International Conference of American States, which met at the city of Mexico on October 22, 1901. There appeared to be, as the American members of the conference reported, a unanimous sentiment in favor of "arbitration as a principle," but a great contrariety of opinion as to the extent to which the principle should be carried. A plan was finally adopted in the nature of a compromise. A protocol looking to adhesion to The Hague convention was signed by all the delegations except those of Chile and Ecuador, who are said, however, afterwards to have accepted it in open conference. A project of a treaty of compulsory arbitration was also signed by the delegations of

certain countries, not including the United States, and a treaty was also adopted covering the arbitration of pecuniary claims.

By the treaty last mentioned, which was signed January 19, 1902, the contracting parties agreed to submit to the permanent court at The Hague, unless they should prefer to create a special jurisdiction, "all claims for pecuniary loss or damage which may be presented by their respective citizens, and which cannot be amicably adjusted through diplomatic channels, when said claims are of sufficient importance to warrant the expenses of arbitration." The existence of the treaty being limited to five years, the question of its renewal came before the Third International American Conference, at Rio de Janeiro, in 1906. The treaty had then been ratified by eight of the signatory states—namely, the United States, Mexico, Nicaragua, Guatemala, Salvador, Honduras, Peru, and Bolivia. A new treaty, incorporating the text of the old with some amendments, was concluded on August 13, 1906. When the Fourth International American Conference met at Buenos Aires in July, 1910, the treaty of 1906 had been ratified by twelve governments. These, in the order of their ratification, were the United States, Chile, Colombia, Costa Rica, Cuba, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, and Salvador. On August 11, 1910, the treaty was renewed, with certain amendments, one of which provided that it should continue in force indefinitely,

subject to the right of a ratifying power to withdraw after two years' notice. The attitude of the governments which had failed to ratify the treaty, after their representatives in the previous conferences had signed it, was undoubtedly affected by the question, the discussion of which had not failed to attend its consideration on any and all occasions, as to the proper limits of diplomatic intervention and as to what might be said to constitute a "denial of justice," rendering such intervention permissible. This question becomes peculiarly difficult and delicate where the claim is founded on an alleged miscarriage of justice in the courts. In the report of the committee at Buenos Aires, which had the treaty in charge, it is admitted to be hardly practicable "to lay down in advance precise and unyielding formulas by which the question of a denial of justice may in every instance be determined," and it is left to be disposed of by the amicable methods of diplomacy and arbitration.

The assumptions often made as to the recent progress of international arbitration and as to the part lately taken by the United States in its development render appropriate a simple statement of the facts. The Convention for the Pacific Settlement of International Disputes, concluded at the Peace Conference at The Hague in 1899, was renewed at the Second Peace Conference in 1907. This convention was justly hailed as a memorable achievement; and although it does not in terms make ar-

bitration obligatory in any case, it does not, on the other hand, by general exceptions, exclude or discredit in advance the submission of any question or class of questions or facilitate the entire evasion of the process by rhetorical formulas. Nevertheless, in order, as was said, to make arbitration "obligatory" a form of treaty was afterwards widely adopted which, while ostensibly requiring the submission, preferably to the Permanent Court at The Hague, of differences "of a legal nature or relating to the interpretation of treaties," excepts even from this restricted obligation questions affecting "the vital interests," "the independence," or the "honor" of the parties, or the "interests of third powers"—in effect, every question concerning which there could be a serious difference. So far as the United States and Great Britain are concerned this clause ran far behind their actual practice, since they had on numerous occasions, and notably in the case of the Alabama claims, submitted to arbitration questions which had been declared to affect the "honor" of the parties. Moreover, the Senate, in acting upon the treaties, amended them, by providing that the "special agreement" defining the question submitted, the arbitrators' powers, and the procedure, should always be subject to its advice and consent, thus in effect requiring a new treaty to be made in each case. Because of this amendment the President, in 1904, withdrew the treaties from the Senate, and they were for the moment abandoned;

but in 1908 they were again taken up and the amendment was accepted.

The result is that, so far as the United States is concerned, it is in practice now more difficult to secure international arbitration than it was in the early days of our independence. Prior to 1908 the United States constantly arbitrated pecuniary claims against foreign governments without concluding a formal treaty. As examples we may take the agreement between the United States and Spain, effected by an exchange of notes on February 11–12, 1871, under which all claims of citizens of the United States against Spain, for wrongs and injuries committed against their persons and property by the Spanish authorities in Cuba since the beginning of the insurrection in 1868, were submitted to a mixed commission composed of two arbitrators and an umpire. These claims involved questions of great international importance, including the validity of decrees of the Spanish government and of legal proceedings against both persons and property in Cuba. Indeed, questions analogous to those involved in the celebrated case of the *Virginius* eventually came before the commission, as well as many delicate questions of nationality or citizenship. The commission remained in existence more than ten years, and the claims presented to it amounted to more than $30,000,000, exclusive of interest. The awards amounted to nearly $1,300,000.

The first case submitted to the Permanent Court

at The Hague under the convention of 1899—the well-known case of the Pious Fund of the Californias —was submitted under a simple executive agreement. Other examples might readily be given; but it suffices to say that, where the settlement embraced claims against the foreign government alone and not against the United States, twenty-seven of our international arbitrations up to 1908 were held under executive agreements as against nineteen under treaties. The former method is now forbidden by the treaties of 1908 so far as they apply.

Again, it was formerly the practice of the United States to make general claims treaties or conventions for the submission of all claims of the one government against the other arising during a certain number of years—perhaps as many as thirty or forty years—to a mixed commission, without discrimination and without specification of particular claims. Reference has already been made to the great arbitration under Article VII. of the Jay treaty of 1794. This article provided for the reference to a mixed commission of all complaints made by citizens of the United States for loss and damage by reason of irregular or illegal captures or condemnations of vessels or other property under color of authority of his Britannic Majesty, and of all complaints of British subjects on account of loss and damage suffered by reason of the failure of the United States to enforce neutrality within its jurisdiction. Here there was no specification or limitation, the two

governments being evidently anxious to remove every cause of controversy by a sweeping arbitral settlement. By the convention of 1853 it was agreed that "all claims" on the part of citizens of the United States against the British government, and "all claims" on the part of British subjects against the United States, which had arisen since the signature of the treaty of peace of December 24, 1814, should be referred to a mixed commission. This convention, as has been seen, was duly carried into effect with great satisfaction to both governments. But when, in 1910, a treaty for the arbitration of claims was made with Great Britain, it was found to be necessary to agree to obtain the Senate's prior consent to the submission of each particular claim, with the result that when, on the outbreak of the war in Europe in 1914, the sittings of the tribunal were suspended, there was every prospect that, after its labors were ended, many important claims would remain unsettled.

It has been stated, and probably is a fact, that there was opposition to a general claims convention with Great Britain because bond claims perhaps might be presented to the commission. But it may be observed that claims were presented to the commission under the convention of 1853 growing out of the non-payment of the bonds of Florida and of Texas, and were disposed of by the decision of the umpire, who disallowed the claims. The same thing took place in respect of claims on account of the

Confederate debt which were presented to the commission under the treaty of 1871.

With a view to remove existing limitations and set an example of confidence in amicable processes there were signed at Washington on August 3, 1911, two remarkable agreements, commonly called the Taft-Knox treaties, between the United States, on the one part, and France and Great Britain, respectively, on the other, by which (Article 1) all future unadjusted differences, involving a "claim of right" and "justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity," were to be submitted to arbitration. In each case the United States was to submit a "special agreement" to the Senate, while, if the subject affected the interests of a self-governing dominion, the British government reserved the right to obtain its concurrence. It was further agreed (Article 2) to institute, on occasion, a Joint High Commission of Inquiry, to which controversies might be referred for investigation, including any as to whether a difference was "justiciable"; and it was stipulated (Article 3) that if all or all but one of the members of the commission should report that the difference was of that character, it should be referred to arbitration. The Senate amended these treaties (1) by making it certain that a "special agreement," requiring its approval, must be effected in each case of arbitration; (2) by denying to the Joint High Commission of Inquiry any power finally

to decide that a difference was arbitrable; and (3) by excluding from the arbitral obligation any question affecting the admission of aliens into the United States or to State educational institutions, the territorial integrity of any State or of the United States, the alleged indebtedness or monied obligation of any State, or any question involving the maintenance of the Monroe Doctrine, "or other purely governmental policy." The treaties were then abandoned.

In the spring of 1913 a paper, later published under the title of "President Wilson's Peace Proposal," was handed by Mr. Bryan to members of the Diplomatic Corps in Washington. It proposed that all disputes which diplomacy should fail to adjust should be submitted to an international commission, pending whose investigation and report war should not be declared nor hostilities begun. In a memorandum accompanying the proposal Mr. Bryan suggested that the international commission, which was to have the power to act on its own initiative, should be composed of five members, each government choosing two, only one of whom should be its own citizen, while the fifth should be agreed on by the contracting parties. A year was to be allowed for the investigation and report. It was further stated that the United States was prepared to consider the question of maintaining the *status quo* as to military and naval preparations during the period of investigation; and it was tentatively suggested that, pending such period, there should be no change in

the military and naval program of either party unless danger from a third power should compel a change, in which case a confidential written statement of the fact by the party menaced was to release both parties from the obligation.

Salvador was the first power to sign the plan in treaty form. She accepted it in its entirety, including the clause as to military and naval programs, as did Guatemala, Panama, Honduras, and Nicaragua. Treaties, without this clause, were concluded with various powers. Up to July, 1917, the ratifications of treaties embracing the essentials of the plan have been exchanged with Bolivia, Brazil, Chile, China, Costa Rica, Denmark, Ecuador, France, Great Britain, Guatemala, Honduras, Italy, Norway, Paraguay, Peru, Portugal, Russia, Spain, Sweden, and Uruguay. They do not, as sometimes is apparently supposed, bind the parties to arbitration, but expressly reserve to them entire freedom of action after the report of the commission shall have been made. The underlying thought of the plan is threefold: (1) That it furnishes an honorable means of suspending controversy; (2) that the suspension of controversy will tranquillize the minds of the disputants; and (3) that the report of the commission of investigation probably will point the way to a fair and equitable adjustment. The plan, it may be observed, makes no distinction between different kinds of rights. It embraces "all disputes" as to "questions of an international character," no matter

what may be the nature of the right asserted or denied. A point which it apparently does not cover, a point which it is indeed very difficult to meet in advance by any specific provision, is that of what may be called a continuing injury, consisting of a wilful and persistent aggression upon substantial rights either as to persons, or as to property, or as to jurisdiction, or as to commerce, rights in whose deliberate and prolonged invasion other governments cannot lawfully or properly be asked to acquiesce.

When we consider the future of international arbitration, whether in America or elsewhere, we are at once confronted with the question as to its limitations. Is it possible to fix any precise bounds, beyond which this mode of settling international disputes may be said to be impracticable? If we consult the history of arbitrations during the past hundred years, we are obliged to answer that no such lines can be definitely drawn; but this is far from affirming that the use of force in the conduct of international affairs will soon be abolished. It signifies merely that phrases such as "national honor" and "national self-defence," which have been employed in describing supposed exceptions to the principle of arbitration, convey no definitive meaning. Questions of honor and of self-defence are, in international as in private relations, matters partly of circumstance and partly of opinion. When the United States, in 1863, first proposed that the differences that had arisen with Great Britain, as

to the fitting out of the *Alabama* and other Confederate cruisers, should be submitted to arbitration, Earl Russell rejected the overture on the ground that the questions in controversy involved the "honor" of her Majesty's government, of which that government was declared to be "the sole guardian." Eight years later there was concluded at Washington the treaty under which the differences between the two governments were submitted to the judgment of the tribunal that met at Geneva. This remarkable example serves to illustrate the fact that the scope and progress of arbitration will depend, not so much upon special devices, or upon general declarations or descriptive exceptions, as upon the dispositions of nations, dispositions which, although they are subject to the modifying influence of public opinion, spring primarily from the national feelings, the national interests, and the national ambitions.

References:

See Moore's *History and Digest of International Arbitrations*, Washington, 1898. 6 vols.

As to The Hague Conferences, see the works of Holls and James Brown Scott (the latter covering both conferences, 1899, 1907); also *The Memoirs of Andrew D. White*.

See also the Reports of the International American Conferences.

IX

THE TERRITORIAL EXPANSION OF THE UNITED STATES

As conventionalized in the annual messages of Presidents to Congress, the American people are distinguished chiefly by their peaceful disposition and their freedom from territorial ambitions. Nevertheless, in spite of these quiet propensities, it has fallen to their lot, since they forcibly achieved their independence, to have had, prior to that whose existence was declared April 6, 1917, four foreign wars, three general and one limited, and the greatest civil war in history, and to have acquired a territorial domain almost five times as great as the respectable endowment with which they began their national career. In reality, to the founders of the American Republic the question of territorial expansion did not present itself as a matter of speculation, or even of choice. There was not a single European power having possessions in America that did not lay claim to more territory than it had effectively occupied, nor was there a single one whose claims were not contested by some other power; and these contests were interwoven with the monopolistic struggle then in progress for colonial commerce and naviga-

tion. The Spaniards and the Portuguese, the English and the French, the Swedes and the Dutch, contended with one another in Europe as well as in America for empire on the American continents. Their colonists knew no rule of life but that of conflict; and they regarded the extension of their boundaries as a measure of self-defence rather than of aggression. We have seen that, by the treaty of alliance with France of 1778, the remaining British possession in North America, if they should be wrested from the mother-country, were to be "confederated with or dependent upon" the United States; and in harmony with this stipulation, provision was made in the Articles of Confederation (Article xi.) for the full admission of Canada into the Union. No other colony was to be so admitted without the consent of nine States; and unless they consented, the colony, if seized, was to remain in a "dependent" position. With the independence of the United States, a new force entered into the territorial contests in America, but it did not stay their course. On the north of the new republic lay the possessions of Great Britain; on the west, the possessions of France; on the south, the possessions of Spain. With all these powers there were questions of boundary, while the colonial restrictions in commerce and in navigation were as so many withes by which the limbs of the young giant were fettered.

It was in order to obtain relief from such condi-

tions that the United States acquired Louisiana. To the inhabitants of the West, the Mississippi River was, as Madison once declared, the Hudson, the Delaware, the Potomac, and all the navigable rivers of the Atlantic States formed into one stream. During the dark hours of the American Revolution, the Continental Congress seemed to be ready to yield to Spain, in return for her alliance, the exclusive right to navigate the Mississippi; but fortunately this was not done. After the re-establishment of peace, Spain continued to maintain her exclusive claims. But the opposition to them in the United States steadily grew stronger and louder; and at length, on October 27, 1795, encompassed by many perils in her foreign relations, Spain conceded to the United States the free navigation of the Mississippi, together with the privilege of depositing merchandise at New Orleans and thence exporting it without payment of duty. The incalculable advantage of this arrangement was daily growing more manifest when, early in 1801, rumors began to prevail that Spain had ceded both Louisiana and the Floridas to France. As a neighbor, Spain, because of the internal weakness of her government and the consequent unaggressiveness of her foreign policy, was not feared; but an apprehension had from the first been exhibited by the United States as to the possibility of being hemmed in by colonies of England and France. If the rumored cession should

prove to be true, the arrangement with Spain with regard to the Mississippi was threatened with extinction. Jefferson was therefore hardly extravagant when he declared that the cession of Louisiana and the Floridas by Spain to France would completely reverse all the political relations of the United States, and would render France, as the possessor of New Orleans, "our natural and habitual enemy."

The treaty of cession was in fact signed at San Ildefonso, on October 1, 1800; but it was not published and even its existence was officially denied. It did not embrace the Floridas, but included the whole of the vast domain then known as Louisiana. The administration at Washington, though in the dark as to what had actually been done, felt the necessity of action. It desired if possible to prevent the transfer of the territory; or, if this could not be accomplished, to obtain from France the Floridas, if they were included in the cession, or at least West Florida, so as to give the United States a continuous stretch of territory on the eastern bank of the Mississippi. With these objects in view, Jefferson appointed Robert R. Livingston as minister to France. Livingston set out on his mission early in October, 1801. On his arrival in Paris he soon became convinced that the cession of Louisiana, if not of the Floridas, had been concluded; and he hinted to Talleyrand, who was then Minister of

Foreign Affairs, that Louisiana might be transferred to the United States in payment of debts due by France to American citizens. Talleyrand replied, "None but spendthrifts satisfy their debts by selling their lands," and then, after a pause, blandly added, "But it is not ours to give." Livingston was not deceived by this evasion; on the contrary, he endeavored to obtain, by appeal to the First Consul himself, Napoleon, the cession, not of the whole but of a part of Louisiana, or at any rate an assurance that the transfer of the territory by Spain to France would not be permitted to disturb the arrangement as to the use of the Mississippi. On February 11, 1802, Talleyrand informed Livingston that he had been instructed by the First Consul to give the most positive assurance on this subject; but it had barely been given, when a report reached Washington that the Spanish intendant at New Orleans had suspended the right of deposit. It was soon learned that the suspension was not authorized by the Spanish government, but the act of the intendant gave rise to energetic discussions in Congress. A resolution was adopted by the House declaring that the stipulated rights of the United States in the Mississippi would be inviolably maintained, while a resolution was offered in the Senate to authorize the President to take forcible possession of such places as might be necessary to secure their full enjoyment. The state of public feeling was such that every

branch of the government felt obliged to take measures not only to preserve existing rights, but also, if possible, to enlarge and safeguard them. With this end in view, James Monroe was joined with Livingston in an extraordinary commission to treat with France, and with Charles Pinckney in a like commission to treat, if necessary, with Spain. The specific objects of the mission, as defined in the instructions given by Madison, as Secretary of State, on March 2, 1803, were the cession to the United States of the island of New Orleans and the Floridas.

Meanwhile, Livingston had, if possible, redoubled his exertions. His favorite plan was to obtain from France the cession of the island of New Orleans and all that part of Louisiana lying northward of the Arkansas River; and he also urged the cession of West Florida, if France had obtained it from Spain. On Monday, April 11th, he held with Talleyrand a memorable and startling interview. Livingston was expatiating upon the subject of New Orleans, when Talleyrand quietly inquired whether the United States desired the "whole of Louisiana." Livingston answered that their wishes extended only to New Orleans and the Floridas, though policy dictated that France should also cede the country above the river Arkansas; but Talleyrand observed that, if they gave New Orleans, the rest would be of little value, and asked what the United States would "give for the whole." Livingston suggested the

sum of 20,000,000 francs, provided the claims of American citizens were paid. Talleyrand declared the offer too low, but disclaimed having spoken of the matter by authority. In reality Napoleon had, on the preceding day, announced to two of his ministers his final resolution. The expedition to Santo Domingo had miserably failed; colonial enterprises appeared to be no longer practicable; war with England was at hand; and it seemed wiser to sell colonies than go down with them in disaster. In this predicament Napoleon decided to sell to the United States not only New Orleans but the whole of Louisiana, and only a few hours before the interview between Talleyrand and Livingston was held, had instructed Barbé Marbois, his Minister of Finance, to negotiate the sale.

Monroe arrived in Paris on April 12th. On the next day Marbois informed Livingston that Napoleon had authorized him to say that, if the Americans would give 100,000,000 francs and pay their own claims, they might "take the whole country." Noting Livingston's surprise at the price, Marbois eventually suggested that the United States should pay to France the sum of 60,000,000 francs and assume the claims of its own citizens to the amount of 20,000,000 more. Livingston declared that it was in vain to ask a thing so greatly beyond their means, but promised to consult with Monroe. The American plenipotentiaries were thus confronted

with a momentous question concerning which in its full extent their instructions did not authorize them to treat; but properly interpreting the purposes of their government and the spirit of their countrymen, they promptly and boldly assumed the responsibility. They accepted Marbois's terms, excessive as they at first seemed, and took the whole province. Speaking in a prophetic strain, Livingston, when he had affixed his name to the treaty of cession, exclaimed: "We have lived long, but this is the noblest work of our lives. . . . To-day the United States take their place among the powers of the first rank. . . . The instrument we have signed will cause no tears to flow. It will prepare centuries of happiness for innumerable generations of the human race." Time has verified Livingston's prevision. The purchase of Louisiana has contributed more than any other territorial acquisition to make the United States what it is to-day.

Though the whole of Louisiana was ceded, its limits were undefined. The province was retroceded by Spain to France in 1800 "with the same extent that it now has in the hands of Spain, and that it had when France possessed it," and by the treaty of April 30, 1803, the territory was ceded to the United States "in the same manner," but the boundaries had never been precisely determined. Livingston and Monroe assured their government that the cession extended to the river Perdido, and

therefore embraced West Florida. This claim was not sanctioned by France, but Congress, acting upon Livingston and Monroe's assurance, authorized the President in his discretion to erect "the bay and river Mobile" and the adjacent territory into a customs district. Spain strongly protested, and the execution of the measure was held in suspense. In the summer of 1810, however, a revolution took place in West Florida. Baton Rouge was seized; the independence of the province was declared; and an application was made for its admission into the Union. The President repulsed this application, but occupied the territory, as far as the river Pearl, as part of the Louisiana purchase. The country lying between that stream and the Perdido was permitted still to remain in the possession of Spain.

On January 3, 1811, President Madison, incited by the political situation in America as well as in Europe, sent to Congress a secret message, in which he recommended that the Executive be authorized to take temporary possession of any part of the Floridas, in certain contingencies. As to West Florida, Congress had already clothed the Executive with ample powers; but as East Florida unquestionably still belonged to Spain, Congress authorized the President to occupy all or any part of the country, either under arrangements with the local authorities or in case a foreign government should attempt to seize

it. Under this act, East Florida was taken possession of all the way from Fernandina to St. Augustine; but the manner in which it was done was disapproved by the government at Washington, and in May, 1813, the country was finally evacuated by the American forces. During the war of 1812, West Florida was the scene of hostilities between the British and the American forces, and in 1817 and 1818 it was the theatre of the famous Seminole war. Meanwhile the government of the United States was endeavoring to obtain from Spain the relinquishment of her provinces. The negotiations, which were conducted on the part of the United States by John Quincy Adams, were brought to a close by the treaty of February 22, 1819, by which Spain ceded to the United States not only the Floridas, but also all the Spanish titles north of the forty-second parallel of north latitude from the source of the Arkansas River to the Pacific Ocean. In return, the United States agreed to pay the claims of its citizens against Spain to an amount not exceeding $5,000,000, and to indemnify the Spanish inhabitants of the Floridas for injuries suffered at the hands of American forces, besides granting to Spanish commerce in the ceded territories, for the term of twelve years, exceptional privileges.

While the United States retained under the treaty of 1819 all the territory to the eastward that it claimed as part of Louisiana, it relinquished by the

same treaty its claim to the imperial domain called Texas, a province long in dispute between France and Spain, and after 1803 between Spain and the United States. Only a brief time, however, elapsed when efforts began to be made to recover Texas, either in whole or in part. Two such attempts were made during the Presidency of John Quincy Adams, in 1825 and 1827. The effort was renewed by President Jackson in 1829, and again in 1833. In August, 1835, the American minister in Mexico was directed to persevere in the task, and also to offer half a million dollars for the bay of San Francisco and certain adjacent territory as a resort for American vessels in the Pacific. On March 2, 1836, the people of Texas, through a convention of delegates, declared their independence. In the following year President Van Buren repelled an overture for annexation. The independence of Texas was, however, acknowledged not only by the United States, but also by France and Great Britain; and treaties were made with Texas by all those powers. On April 12, 1844, a treaty of annexation was concluded at Washington. This treaty having failed in the Senate, Congress, by a joint resolution approved March 1, 1845, took action looking to the admission of Texas into the Union as a State. The terms offered in the resolution were accepted by Texas, and by a joint resolution of Congress, approved December 29, 1845, the admission was formally accom-

plished. No acquisition of territory by the United States has been the subject of so much honest but partisan misconception as that of the annexation of Texas. By a school of writers whose views have had great currency, the annexation has been denounced as the result of a plot of the slave-power to extend its dominions. But, calmly surveying the course of American expansion, we are forced to conclude that no illusion could be more complete. It would be more nearly correct to say that, but for the controversy concerning slavery, there would have been no appreciable opposition in the United States to the acquisition of Texas. Such local antagonism as might have existed to the disturbance of the balance of power in the Union would have been overwhelmed by the general demand for an extension of boundaries so natural and, except for the slavery question, in every respect so expedient.

Six months after the annexation of Texas, the long dispute as to the Oregon territory was brought to a close. This territory was bounded, according to the claim of the United States, by the 42d parallel of north latitude on the south, by the line of 54° 40′ on the north, and by the Rocky or Stony Mountains on the east. It embraced, roughly speaking, an area of 600,000 square miles. The claim of the United States was founded upon the discovery by Captain Robert Gray, of the American ship *Columbia*, in 1792, of the River of the West, which

he named from his ship the Columbia River; the exploration of the main branch of that river by Lewis and Clark; the establishment of the fur-trading settlement of Astoria, by John Jacob Astor, in 1811, and its restoration to the United States under the treaty of Ghent; and finally, the acquisition in 1819 of all the territorial rights of Spain on the Pacific above forty-second degree of north latitude. By the Democratic national platform of 1844 the title of the United States to the whole of Oregon was declared to be "clear and unquestionable." This declaration was popularly interpreted to mean "fifty-four forty or fight"; but on June 15, 1846, under the shadow of the Mexican war, the dispute was terminated by a nearly equal division of the territory along the forty-ninth parallel of north latitude.

This title had barely been assured, when, as the result of the war with Mexico, the United States, by the treaty signed on its behalf by Nicholas P. Trist, in defiance of instructions, at Guadalupe-Hidalgo, on February 2, 1848, came into possession of California and New Mexico. In consideration of these cessions, the United States paid to Mexico $15,000,000, and assumed the payment of claims of American citizens against Mexico to an amount not exceeding $3,250,000. The acquisitions thus made were enlarged by the convention of December 30, 1853, by which Mexico, for the sum of $10,000,000, released the United States from liability on

account of certain stipulations of the treaty of 1848 and ceded the Mesilla Valley. This cession, which is often called the Gadsden purchase, was strongly desired by the United States, not only for the purpose of establishing a safe frontier against the Indians, but also for the purpose of obtaining a feasible route for a railway near the Gila River.

By the treaty signed at Washington on March 30, 1867, the Emperor of Russia, in consideration of the sum of $7,200,000, conveyed to the United States all his "territory and dominion" in America. Many strange conjectures have been made as to the motives of this transaction. It has been suggested that it was merely a cover for the reimbursement to Russia of the expenses of her "friendly naval demonstration" during the American civil war. This explanation may be placed in the category of the grotesque. Robert J. Walker has been given as authority for the statement that the Emperor Nicholas was ready to give Alaska to the United States during the Crimean war, if the United States would, in spite of the treaty of 1846, reassert its claim to the whole of Oregon. In reality, the territory was of comparatively small value to Russia, who had for years leased an important part of the coast to the Hudson's Bay Company. In the hands of the United States its potential value was obviously greater. Its acquisition was, besides, gratifying to the spirit of continental dominion, which has al-

ways been so strongly manifested by the people of the United States.

The acquisition of the Hawaiian Islands, under the joint resolution of Congress of July 7, 1898, marked the natural consummation of the special relations that had long subsisted between the United States and that island group. As early as 1853 the United States, while William L. Marcy was Secretary of State, sought to annex the islands. A treaty of annexation was negotiated, but, as its form was unacceptable to the United States, it was put aside for a treaty of reciprocity. This treaty failed to receive the approval of the Senate, but the agitation for annexation or reciprocity continued; and at length, on January 30, 1875, a reciprocity treaty was concluded by which the islands were virtually placed under an American protectorate. This treaty was renewed in 1887, the United States then acquiring the right to establish a naval station in the harbor of Pearl River. On February 14, 1893, a treaty of annexation was signed at Washington, but on the change of administration it was withdrawn from the Senate. Another treaty of annexation, signed on June 16, 1897, was still before the Senate when the joint resolution was passed by which the acquisition was definitively accomplished.

Alaska and Hawaii were far distant from the United States, but the greater part of Alaska was on

the continent of North America, and the Hawaiian Islands had so long been the subject of special protection as to have come to be considered within the sphere of American influence. The war with Spain opened a new vista. Even the remotest of the Spanish possessions in the West Indies fell within the conception of America, but the Spanish possessions in the Far East lay beyond the accustomed range of American political thought. For some weeks after the destruction of the Spanish fleet at Manila, the views of the United States seemed scarcely to extend beyond the possible acquisition of a naval station in the Philippines for strategic purposes. The desire for a naval station, however, soon grew into the desire for an island—perhaps the island of Luzon. When news came of the capture of Manila by the American forces, with some American casualties, the desire for the whole group received a marked impulse. In his instructions to the American peace commissioners at Paris, President McKinley said that the United States would not be content with "less than" the island of Luzon. More than two months elapsed before instructions were given to take the whole group; and even then, as the records show, the American commissioners were divided on the question. For my own part, I venture to express the opinion that the problem was simplified by taking all the islands. Though the group is vast in extent, it is physically con-

tinuous, and, if a considerable part of it had been retained by Spain, the dangers attendant upon native revolt and discontent would have been incalculably increased. The acquisition of Puerto Rico and other Spanish islands in the West Indies provoked no division of opinion.

There is no incident in the history of the United States that better prepares us to understand the acquisition of the Philippines than the course of the government towards the Samoan Islands. As early as 1853, if not earlier, the United States was represented at Apia by a commercial agent; but the islands and their affairs attracted little attention till 1872, when the great chief of the bay of Pago-Pago (pronounced Pango-Pango), in the island of Tutuila, desirous of obtaining the protection of the United States, granted to the government the exclusive privilege of establishing a naval station in that harbor. A special agent, named Steinberger, was then despatched to Samoa, and, after making a report, he was sent back to convey to the chiefs a letter from President Grant and some presents. Subsequently he set up, on his own responsibility, a government in the islands and administered it. But as ruler of Samoa he fell into difficulties, and, with the concurrence of the American consul, was deported on a British man-of-war. On January 16, 1878, a treaty between the United States and Samoa was concluded at Washington, by which the privi-

leges of the United States in the harbor of Pago-Pago were confirmed, and by which it was provided that, if differences shall arise between the Samoan government and any other government in amity with the United States, the latter would "employ its good offices for the purpose of adjusting those differences upon a satisfactory and solid foundation." It was under this clause that the conference, which was held in Washington in June and July, 1887, between Mr. Bayard, as Secretary of State, and the British and German ministers, on Samoan affairs, was brought about. The conference failed to produce an agreement. Germany intervened in the islands, and became involved in hostilities with a part of the natives. Steps were taken to protect American interests, and the relations between the United States and Germany had become decidedly strained when, on the invitation of Prince Bismarck, the sessions of the conference were resumed at Berlin. They resulted in the treaty of June 14, 1889, by which the islands were placed under the joint protection and administration of the three powers. One of the first acts of the United States after the war with Spain was the termination of this cumbersome system of tripartite government, which, apart from an adjustment of claims to land, had yielded no beneficial result. Disorders had increased rather than diminished, while local complications at times threatened to disturb the good understanding of

the intervening powers. At length there was suggested, to take the place of the treaty of 1889, a "condominium" under which the functions of sovereignty were to be exercised by unanimous consent of the three powers. Fortunately, this device was not tried. A radical solution was wisely adopted. By a convention between the three powers, signed at Washington, December 2, 1899, the group was divided, the United States securing all the islands east of the meridian of 171° west of Greenwich, while Germany obtained all west of that line. Great Britain retired for compensation from Germany in other directions. The principal islands, Savaii and Upolu, fell to Germany, her preponderant commercial and landed interests being thus recognized, as those of the United States in Hawaii had been by Germany in the days of Prince Bismarck. The island of Tutuila, with the much-coveted harbor of Pago Pago, was among the islands that passed exclusively to the United States. The significance of the Samoan incident lies, however, not in the mere division of territory, but in the disposition shown by the United States, long before the acquisition of the Philippines, to have a voice in determining the fate of a remote island group in which American commercial interests were so slight as to be scarcely appreciable.

By the convention with the Republic of Panama, November 18, 1903, the United States acquired in perpetuity the use, occupation, and control of a

zone ten miles wide on the Isthmus of Panama, and certain adjacent islands, for the purposes of an interoceanic canal. Within these lands and the adjacent waters the United States possesses "all the rights, power, and authority" which it would have if it were the sovereign of the territory within which the lands and waters lie. It may be observed that an unsuccessful effort was made in 1856 to obtain from New Granada the cession of five islands in the bay of Panama, with a view to protect the isthmian route.

In 1903 Cuba leased to the United States coaling and naval stations at Guantanamo and Bahia Honda. While the United States agreed to recognize the continuance of the "ultimate sovereignty" of Cuba over the areas of land and water thus leased, Cuba agreed that the United States should exercise "complete jurisdiction and control" over them.

By the treaty of August 5, 1914, Nicaragua leased to the United States, for the term of ninety-nine years, the Corn Islands and also a naval base, to be selected by the United States, in the territory of Nicaragua bordering on the Gulf of Fonseca. The treaty also gives the United States the option of renewing the leases, and declares that the leased places "shall be subject exclusively to the laws and sovereign authority of the United States during the terms of such lease and grant and of any renewal or renewals thereof."

As early as January, 1865, Mr. Seward began to

sound the Danish government as to the cession of its islands in the West Indies. His advances were discouraged, but they were renewed officially in July, 1866. A convention for the cession of St. Thomas and St. John for $7,500,000, leaving Santa Cruz to Denmark, was signed at Copenhagen on October 24, 1867. As stipulated in the treaty, a vote was taken in the islands; it was almost unanimously in favor of annexation to the United States. This circumstance greatly increased the embarrassment of the Danish government when the United States Senate failed to approve the treaty. On January 24, 1902, a convention was signed at Washington for the cession to the United States of the islands of St. Thomas, St. John, and Santa Cruz, with the adjacent islands and rocks, all for the sum of $5,000,000. It was approved by the Senate on February 17, 1902. It was approved by the lower house of the Danish Rigsdag; but on October 21, 1902, it failed in the upper house, by an even division. The cession was, however, eventually effected by a treaty, concluded August 4, 1916, by which the United States agreed to pay $25,000,000. The transaction was completed. The United States has named the group the Virgin Islands.

Besides the annexations above detailed the United States has acquired or assumed jurisdiction over many islands in various parts of the world. In 1850 the cession was obtained from Great Britain of Horse-Shoe Reef, in Lake Erie, for the purposes of a

lighthouse. In 1867, Brooks or Midway Islands, lying eleven hundred miles west of Honolulu, were formally occupied by the commander of the U. S. S. *Lackawanna*. In like manner the atoll called Wake Island, lying in latitude 19° 17′ 50″ north and longitude 166° 31′ east, was taken possession of in 1899 by the commander of the U. S. S. *Bennington*. But the greatest extension of jurisdiction over detached islands or groups of islands has taken place under the Guano Islands Act of August 18, 1856. By this act, where an American citizen discovers a deposit of guano on an island, rock, or key, not within the jurisdiction of any other government, and takes peaceable possession and gives a certain bond, the President may, at his discretion, treat the territory as "appertaining to the United States"; but the government is not obliged to retain possession after the guano shall have been removed. Under this statute more than eighty islands, lying in various parts of the Atlantic and the Pacific, have been brought within American jurisdiction.

The actual acquisitions of territory by the United States by no means indicate the scope of its diplomatic activities in that direction. Efforts have been made to annex territory which has not eventually been obtained. As late as 1870 the annexation of Canada, to which the Articles of Confederation looked, was the subject of informal discussions between British and American diplomatists. In December, 1822, the government of Salvador, acting

under a decree of its Congress, dispatched three commissioners to Washington to offer the sovereignty of the country to the United States, but before their arrival the situation had changed and the proposal was abandoned. Ever since the foundation of the American Republic, the annexation of Cuba has formed a topic of discussion and of diplomatic activity. John Quincy Adams in 1823 declared that Cuba, if forcibly disjoined from Spain, and incapable of self-support, could gravitate only towards the North American Union; and Jefferson confessed that he had "ever looked on Cuba as the most interesting addition which could ever be made to our system of states." In 1848 an offer was made to Spain to purchase the island for $100,000,000, but it was summarily repulsed. During the Civil War in the United States, the discussion of the Cuban question, which had actively continued during the administrations of Pierce and Buchanan, was suspended; but it was revived by the breaking out of the Ten Years' War in Cuba, in 1868. In the next year a vigorous effort was made to secure the separation of Cuba from Spain either by annexation to the United States or by the grant of independence under the guarantee of the United States. This was the last definite proposal made to Spain for annexation, and, when the United States eventually intervened, it was for the purpose of establishing Cuban independence. In the peace negotiations at Paris, the Spanish commissioners proposed to

cede the island to the United States. The proposal was declined; and the manner in which the resolution of intervention was kept, by the establishment of an independent government under safeguards which cannot hamper the exercise of the island's sovereignty for any legitimate purpose, forms one of the most honorable chapters in diplomatic history.

In 1848 an offer of the sovereignty of Yucatan was made to the United States, but the occasion for its consideration soon passed away.

In negotiations with the Dominican Republic, in 1854, for a commercial treaty, an effort was made to obtain for the United States a coaling station in Samana Bay. An examination of the bay had been made by Captain George B. McClellan, whose report may be found among the Congressional documents. The effort to obtain the desired privilege was renewed in 1855, but without success. In 1866, Mr. F. W. Seward, Assistant Secretary of State, was sent to Santo Domingo for the purpose of securing a cession or lease of the peninsula of Samana as a naval station. His mission was not successful, but its object was not abandoned, and his powers were transferred to the commercial agent at Santo Domingo City. In 1868 the President of the Dominican Republic requested the United States immediately to take the country under its protection and occupy Samana Bay and other strategic points as a preliminary to annexation. In his annual mes-

sage of December 9, 1868, President Johnson, Mr. Seward still being Secretary of State, advocated the acquisition of "the several adjacent continental and insular communities as speedily as it may be done peacefully, lawfully, and without any violation of national justice, faith, or honor," and declared that, while foreign possession or control of them had "hindered the growth and impaired the influence of the United States," "chronic revolution and anarchy would be equally injurious." A joint resolution was introduced in the House of Representatives for the annexation of the Dominican Republic. An agent from Santo Domingo was then in Washington awaiting action. The project was warmly espoused by President Grant, and on November 29, 1869, two treaties were concluded, one for the annexation of the Dominican Republic and the other for the lease of Samana Bay. Both instruments were communicated to the Senate on January 10, 1870. They failed to receive that body's approval. In his last annual message to Congress, in 1876, President Grant recurred to the subject, reaffirming his belief in the wisdom of the policy that he had proposed.

In 1867 George Bancroft was instructed, while proceeding as minister to Berlin, to call at Madrid and sound the Spanish government as to the cession of the islands of Culebra and Culebrita, in the Spanish West Indies, to the United States as a naval station. The results of his inquiries were so discouraging that the subject was peremptorily dropped; but

the islands came into the possession of the United States under the treaty of peace with Spain of 1898.

The Môle St. Nicolas, in Hayti, was leased by the United States during the Civil War as a naval station. In 1891, however, the Haytian government declined to let the harbor again for a similar purpose.

References:

For a review of the Territorial Expansion of the United States, see

Moore's *Digest of International Law*, I, 429 *et seq.*;
Bancroft's (Frederic) *Life of Seward;*
Barbé Marbois's *History of Louisiana;*
Roosevelt's *Winning of the West.*

X

PAN AMERICANISM

THE American republics number just twenty-one. The youngest, Panama, which suddenly came into being late in 1903, was very shortly preceded in existence by Cuba. With the exception of the United States they are all, politically speaking, of "Latin" origin, and constitute what is for that reason called Latin America, occupying the vast region formerly ruled by Spain and by Portugal. The Portuguese dominions, though greater in extent than the connected continental area of the United States, are comprised in what was for sixty-seven years the empire, but is now the republic, of Brazil. The remaining nineteen countries were once colonies or provinces of Spain. When we speak of Pan Americanism we associate the countries of Spanish and of Portuguese derivation with the United States, and thus link together in our thoughts all the independent governments of America.

The chief significance to Spain of the American Revolution lay in the fact that it marked the beginning of the end of the old system of colonial

monopoly. In the Orient, as well as in America, colonies had been held by European nations purely for purposes of national exploitation. The movement for independence in America indicated the fact that the time would come when, with the development of colonial resources, dependence would be succeeded by independence.

For a number of years after the American Revolution the Spanish colonies in America continued to be comparatively quiet and contented. Grave misfortunes, however, awaited the mother country. In 1808 Spain was invaded. Her King, Charles IV., was forced to abdicate and to transfer to Napoleon all right and titles to the Spanish Crown and to its colonial possessions. On June 15, 1808, Napoleon's brother, Joseph Bonaparte, was crowned King of Spain at Bayonne. The people of Spain refused to bow to alien rule. Juntas were formed in various parts of the country for the purpose of resisting in the name of Ferdinand VII., son of the dethroned monarch, the new government. Not long afterwards similar movements took place in South America. Loyalist juntas were formed, modelled on those that were organized in Spain. But owing to various causes, among which was the refusal of the Regency at Cadiz to recognize the American juntas, the loyalist movement in the colonies, although originally levelled against the Napoleonic government in Spain, was gradually transformed into a genuine movement for independence. As a result Spain,

after her legitimate government was restored, found herself at war with her American colonies.

In 1815 Simon Bolivar, then living in poverty and exile at Kingston, Jamaica, wrote the famous "prophetic" letter in which he declared that the destiny of America to be independent was "irrevocably fixed." On July 9, 1816, a congress at Tucuman declared the United Provinces of the Rio de la Plata, of which Buenos Aires was the head, to be a free and independent nation. In February of the following year the Chilean revolutionists gained at Chacabuco a decisive victory which presaged a similar declaration. On December 6, 1817, Henry Clay announced in the House of Representatives that he intended to move the recognition of Buenos Aires and probably of Chile.

In the struggle between Spain and her colonies the United States maintained a neutral position, although the sympathies of the people naturally ran strongly in favor of the revolutionists. In 1817 a commission consisting of Cæsar A. Rodney, John Graham, and Theodoric Bland, with Henry M. Brackinridge as secretary, was sent out to examine into the conditions existing in South America, and particularly in Buenos Aires and Chile. The views of the commissioners, which in many respects differed, were embodied in separate reports. These reports were duly submitted to Congress, as was also a special report from Joel R. Poinsett, who had acted as an agent of the United States at Buenos

Aires. The general tenor of the reports was unfavorable to the recognition of independence at that time; but this did not deter Mr. Clay from moving in the House of Representatives in March, 1818, an appropriation for the salary of a minister to the government which had its seat at Buenos Aires. This motion was lost by one hundred and fifteen noes to forty-five ayes. On May 10, 1820, Clay submitted in the House a resolution declaring it to be expedient to provide by law for the sending of ministers to any of the governments of South America that had established their independence. This resolution was carried by a vote of eighty to seventy-five, but it did not provide an appropriation. On February 9, 1821, a motion for an appropriation was lost by only seven votes. A year later, the President having expressed to Congress the opinion that recognition should no longer be withheld, an appropriation was duly made; and the recognition of the independence of the new American nations was begun. Against such recognition the Spanish minister at Washington, in the name of his government, solemnly protested, but the action of the United States was vindicated, with his accustomed ability, by John Quincy Adams, then Secretary of State, on grounds both of right and of fact.

On December 2, 1823, there came, as has elsewhere been seen, the celebrated pronouncement of President Monroe. When that pronouncement was made the danger of interference by the Allied Powers of

Europe in the affairs of Spanish America had in reality passed away. But a great question still remained. Recognition had been accorded; but the character of the relations of the United States with the other independent countries of the hemisphere remained to be determined and defined.

In a letter written at Lima on December 7, 1824, Bolivar, then at the head of the Republic of Peru, suggested the holding of a conference of representatives of the independent governments of America at Panama. The object of the conference was declared to be "the establishment of certain fixed principles for securing the preservation of peace between the nations of America, and the concurrence of all those nations in defence of their own rights." Bolivar's invitation embraced Colombia, Mexico, Central America, Buenos Aires, Chile, and Brazil. It did not include the United States. For this omission a sufficient reason may be found in the circumstance that the United States was not a party to the conflict then still in progress between Spain and her former colonies, but it has also been conjectured that the existence of African salvery in the United States was regarded by Bolivar as an obstacle to the free discussion of some of the matters of which the congress might be obliged to treat. The first intimation that the presence of the United States was desired was made by the representatives of Colombia and Mexico in conversations with Clay, who had become Secretary of State. The President,

John Quincy Adams, although he had warmly espoused the cause of the American nations as against any hostile projects of the Holy Alliance, felt obliged to proceed with caution, since the United States was maintaining in the Spanish-American conflict a neutral position; but Clay warmly urged that the invitation be accepted. The idea of a common interest arising from a similarity of political principles had taken a profound hold upon him. He was in reality the great champion of this conception. The invitation to the congress was accepted.

The subjects to be discussed were divided into two classes: First, those peculiarly and exclusively concerning the countries which were still at war with Spain; and secondly, those between belligerents and neutrals. In the discussion of the former, it was not expected that the United States would take part, but the occasion was thought to be opportune for the establishment of fixed principles of international law in matters in respect of which the previous uncertainty had been the cause of many evils.

The President appointed as plenipotentiaries of the United States two eminent men, Richard C. Anderson of Kentucky and John Sergeant of Pennsylvania. Their instructions, dated May 8, 1826, were drawn by Clay and were signed by him as Secretary of State. Covering a wide range, they disclosed the broad and far-reaching views to which, in co-operation with the President, now a sturdy advocate of Pan Americanism, he sought to give effect. At the

very threshold they declared that the President could not have declined the invitation to the congress "without subjecting the United States to the reproach of insensibility to the deepest concerns of the American hemisphere," and perhaps of a want of sincerity in regard to Monroe's solemn declarations. Moreover, the assembling of a congress would, so the instructions declared, "form a new epoch in human affairs." Not only would the fact itself challenge the attention of the civilized world, but it was confidently hoped that the congress would "entitle itself to the affection and lasting gratitude of all America, by the wisdom and liberality of its principles" and by the establishment of a new guarantee for the great interests which would engage its deliberations. At the same time the fact was emphasized that the congress was to be regarded as a diplomatic body, without powers of ordinary legislation. It was not to be "an amphictyonic council, invested with power finally to decide controversies between the American states or to regulate in any respect their conduct," but was expected to afford opportunities for free and friendly conference and to facilitate the conclusion of treaties.

After these preliminary explanations, the instructions proceeded to point out that it was not the intention of the United States to challenge its "pacific and neutral policy." While, therefore, the congress probably would consider the future prosecution of the war with Spain by the existing belligerents,

the delegates of the United States were not to enter into the discussion of that subject, but were to confine themselves strictly to subjects in which all the American nations, whether belligerent or neutral, might have an interest. One of these was the maintenance of peace, which was declared to be "the greatest want of America." In regard to European wars, confidence was expressed that the policy of all America would be the same, that of "peace and neutrality," which the United States had consistently labored to preserve. On this supposition the greatest importance was, said the instructions, attached to questions of maritime neutrality. The delegates were to bring forward "the proposition to abolish war against private property and non-combatants upon the ocean," as formerly proposed by Dr. Franklin; but, as this might not be readily adopted, they were authorized to propose that free ships should make free goods and that enemy ships should make enemy goods, both rules being considered to operate in favor of neutrality. The delegates were also to seek a definition of blockade, and were, besides, to deal with the subject of contraband, whose vital relation to the preservation of neutral trade is, it may be remarked, not always fully appreciated.

In regard to commercial intercourse, the instructions incorporated the most liberal views. The delegates of the United States were not to seek exclusive privileges, even as against the European powers.

They were to observe the most-favored-nation principle, so that any favors in commerce or in navigation granted by an American nation to any foreign power should extend to every other American nation; and were to oppose the imposition of discriminating duties on importations or exportations on account of the flag. As for the Monroe declarations, the delegates of the United States, without committing the parties to the support of any particular boundaries or to a joint resistance in any future case, were desired to propose a joint declaration that each American state, acting for and binding only itself, would not allow a new European colony to be established within its territories. Another subject, closely related to commerce as well as to politics, was that of a canal to connect the Atlantic and the Pacific. Treating of this subject in a spirit of liberality, the instructions said: "What is to redound to the advantage of all America should be effected by common means and united exertions, and should not be left to the separate efforts of any one power. . . . If the work should ever be executed so as to admit of the passage of sea vessels from ocean to ocean, the benefits of it ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation or reasonable tolls."

In only one passage of this remarkable state paper did its author seem to labor. This was where he was obliged to discuss the troublesome question that so

persistently marred the prospect in which his fancy loved to range. The congress might perhaps consider the question of Cuba and of Haiti. With regard to the latter, he expressed the opinion that the subject was not one that required concert of action between all American powers. The case of Cuba was more complex. The United States, it was said, would prefer the unaided establishment of Cuban independence, but was convinced that the island was incompetent to sustain self-government without assistance. An independence guaranteed by other powers, European or American, or both, would on the other hand involve difficulties almost insuperable. Likewise fraught with danger was the design which rumor ascribed to Colombia and to Mexico to conquer and annex the island. Such an attempt would, declared the instructions, change the whole character of the war and involve continual fears as to the future stability of conditions. The delegates of the United States were therefore authorized to state without reserve that their government, having too much at stake to see with indifference a war against Cuba prosecuted in a desolating manner, or one race employed against another probably with the most shocking excesses, would be constrained to employ all means necessary to defend itself against the "contagion" of such near and dangerous examples.

Having thus dealt with a vexed question, the instructions passed to other topics. It was suggested that a joint declaration be made in favor of the free

toleration of religious worship. If questions of boundary and other controverted matters among the new American powers should be presented, the delegates of the United States were to manifest a willingness to give their best counsel and advice, and, if it were desired, to serve as arbitrator. Finally, as to forms of government and the cause of free institutions, it was declared that the United States were not and never had been "animated by any spirit of propagandism." They preferred "to all other forms of government . . . their own confederacy"; but, allowing, as they did, "no foreign interference" either in the formation or in the conduct of their own government, they were "equally scrupulous in refraining from all interference in the original structure or subsequent interior movement of the governments of other independent nations."

The views of Clay were strongly reënforced by the utterances of the President. "Having been the first," said Adams, "to recognize their independence and to sympathize with them, so far as was compatible with our neutral duties, in all their struggles and sufferings to acquire it, we have laid the foundation of our future intercourse on the broadest principles of reciprocity and the most cordial feelings of fraternal friendship. To extend those principles to all our commercial relations with them, and to hand down that friendship to future ages, is congenial to the highest policy of the Union, as it will be to that of all those nations and their posterity." Entering

into the matter more particularly, he placed the interest of the United States in the congress on four grounds: First, that of promoting "the principles of a liberal commercial intercourse"; second, the adoption of liberal principles of maritime law, including the rule that free ships make free goods, and the proper restriction of blockades; third, an agreement between all the parties that each would "guard by its own means against the establishment of any future European colony within its border," as had already been announced in the message of Monroe; and fourth, the promotion of religious liberty.

Nevertheless, the plans of the administration in regard to the assembly at Panama encountered in the Congress of the United States a determined and able opposition. It was argued that the proposed mission involved a departure from the wise policy of non-intervention established by Washington. Another ground of opposition was that one of the questions proposed for discussion in the congress was "the consideration of the means to be adopted for the entire abolition of the African slave trade." An apprehension was also felt that the congress would be called upon to consider plans of international consolidation which would commit the United States to a more hazardous connection with the fortunes of other countries than was desirable.

In the end, the nominations of the President were confirmed; but when the representatives of the United States reached the Isthmus of Panama the

congress had adjourned. Four governments were represented in it—namely, Colombia, Central America, Mexico, and Peru. The assembly held ten meetings, the last of which took place on July 15, 1826. Representatives of Great Britain and of the Netherlands were present on the Isthmus and, although not admitted to the congress, no doubt freely advised with its members.

Four agreements were signed at Panama: (1) A treaty of perpetual union, league, and confederation; (2) an engagement for the assembling of the congress every two years, and, while the war with Spain lasted, every year; (3) a convention specifying the contributions in men, in ships, and in money, which the parties should make for the prosecution of the war against Spain; and (4) a plan for the organization of their common force. To a great extent these agreements related to the interests which the parties had as belligerents, but there were some of the stipulations which had a far wider scope. An attempt was made to establish a council for the interpretation of treaties and for the employment of conciliation and mediation in the settlement of international disputes. It was provided that all differences between the contracting parties should be amicably compromised, and that if this were not done, such differences should be submitted to the General Assembly, as it was called, for the formulation of an amicable recommendation. In case of complaints or injuries the parties were not to declare

war or to resort to reprisals without first submitting their grievances to the decision of the General Assembly. Nor was any of the parties to go to war against an outsider without soliciting the good offices, interposition, and mediation of the allies. Any contracting party violating these stipulations, either by going to war with another or by failing to comply with the decision of the General Assembly, was to be excluded from the confederation and was to be incapable of restoration except by a unanimous vote. The contracting parties also pledged themselves to co-operate to prevent colonial settlements within their borders, and as soon as their boundaries were determined mutually to guarantee the integrity of their respective territories.

These benevolent proposals, which strongly remind us of some that are put forth to-day, were not destined to be carried into effect. The agreements were ratified by one only of the contracting parties—Colombia—and by Colombia only in part. In reality the conditions at the time were such that effective co-operation was scarcely possible.

The practical failure of the United States to be represented at the Congress of Panama was an unfortunate omen. Indicative in itself of an attitude somewhat unsympathetic, this impression was deepened by the arguments by which the opposition to the mission was sustained. But, in addition to this, the continuance of the war with Spain and the prevalence of revolutionary conditions in the new states gave

rise to frequent complaints and controversies. In the southern part of the hemisphere an unfavorable sentiment was no doubt created by the breaking up by the United States of the establishment which the government at Buenos Aires had made on the Falkland, or, as the Argentines call them, the Malvinas Islands, the title to which was generally believed to belong to Great Britain, by whom they were afterwards effectively occupied. But the greatest source of disturbance was that which existed at the north, where Mexico labored in the constant throes of revolution. This cause of divergence was greatly accentuated by the revolt in Texas and the cry which sprang up in the United States for the "reannexation" of that imperial domain, which was alleged to have been a part of the Louisiana territory. As I have elsewhere remarked,[1] no acquisition of territory ever made by the United States was more natural or more completely in conformity with the aspirations and habits of thought of the American people. But, no matter how natural it may have been, it created a sense of apprehension, which was deepened and greatly intensified by the war with Mexico, which, resulting as it did in the conquest and annexation by the United States of a vast extent of Mexican territory, produced upon the attitude of the countries of Central and South America towards the United States a more pronounced and more unfavorable effect than any other event that has ever

[1] *Four Phases of American Development*, p. 174.

occurred. Of this fact, practically nothing is said in our histories, nor has it been clearly understood in the United States; but its influence may easily be traced in the acts and utterances of the Central and South American governments.

For some years after the Congress of Panama steps were from time to time taken to bring about another meeting. In this movement Mexico was the chief factor, no doubt because of her apprehension as to the continued retention of her northern territory. The object which she proposed was a union and close alliance "for the purposes of defence against foreign invasion, the acceptance of friendly mediation in the settlement of all disputes . . . between the sister republics, and the framing and promulgation of a code of public law regulating their mutual relations." Sixteen years later, in 1847, a congress composed of representatives of Bolivia, Chile, Ecuador, New Granada (now Colombia), and Peru assembled at Lima for the purpose of adopting measures to insure "the independence, sovereignty, dignity, and territorial integrity" of the republics concerned. Other American republics were to be admitted to the deliberations of the congress or to adhere to the agreements which it might conclude. The congress even decided to extend an invitation to the United States, but a favorable response could hardly have been expected, the United States being then at war with Mexico and in occupation of California and New Mexico, besides having annexed

Texas. The invitation probably was intended to convey to the United States a pointed intimation of the views and objects of the congress.

On September 15, 1856, there was signed at Santiago, in Chile, the so-called "Continental Treaty," between Chile, Ecuador, and Peru, for the purpose, as the text declared, of "cementing upon substantial foundations the union which exists between them, as members of the great American family . . . and promoting moral and material progress, as well as giving further guarantees of their independence and territorial integrity." The government of Peru was authorized to communicate the treaty to other American governments and to request their adhesion. Brazil, although then a monarchy, was invited to join the union. The United States was not approached.

In reality the chief cause of the attempted alliance was the feeling of continued apprehension towards the United States caused by the expeditions of William Walker and other filibusters to Central America and Mexico in the years following the Mexican War.

The alarm created by these expeditions, and particularly by those of Walker to Central America, was profound, nor can it be said to have been destitute of foundation. Costa Rica, apprehensive as to her own future, undertook the necessary sacrifices of men and of money for the expulsion of the so-called Walker-Rivas government from Nicaragua.

In their extremity the countries of Central America then looked for help to Europe rather than to the United States, and they felt that, so far as thanks were due to any foreign power for aid in the suppression of filibustering, they were due chiefly to France and Great Britain, who eventually took concerted action in that direction.

Moreover, ten years after the close of the war with Mexico a serious condition of affairs again arose between the United States and that country. By the so-called Gadsden treaty of 1853 the United States acquired by purchase the Mesilla Valley from Mexico. Five years later, in 1858, President Buchanan, referring in his second annual message to Congress to the unhappy condition of affairs existing along the southwestern frontier of the United States, earnestly advised Congress "to assume a temporary protectorate over the northern parts of Chihuahua and Sonora, and to establish military posts within the same." "This protection might," he said, "be withdrawn as soon as local governments should be established in those states capable of performing their duties to the United States, of restraining lawlessness and of preserving peace along the borders." The disorders continuing to increase, he recurred to the subject in his third annual message and recommended that he be authorized to "employ a sufficient military force to enter Mexico for the purpose of obtaining indemnity for the past and security for the future." In making this recom-

mendation he referred to Mexico as "a wreck upon the ocean, drifting about as she is impelled by different factions." In these circumstances he intimated that if the United States should not take appropriate action it would not be surprising if some other nation should undertake the task.

Having discovered that his recommendations would not be sustained by Congress, he sought to accomplish the same object by means of treaties, but the United States was then on the verge of the great convulsion which was to shake the structure of its own government to the very foundations, and attention was drawn from affairs in Mexico and other American countries to the approaching crisis in affairs at home.

But for the occurrence of the Civil War in the United States there is every reason to believe that the relations between this country and the other independent nations of the hemisphere would have been radically different from those that came to prevail. The opposition to the extension of slavery having always operated as a force antagonistic to expansion towards the south, the outbreak of the Civil War put a sudden end to the tendencies in that direction, besides serving to create a readier sympathy with countries afflicted with domestic dissensions. The attitude of the United States underwent an instantaneous and profound change. The government of Costa Rica, when discussing with the government of Colombia in 1862 a proposal for a "Con-

tinental League," observed that there were not always at the head of the great Republic of the North "moderate, just, and upright men such as those who now form the administration of President Lincoln." This utterance is highly significant, not only of the impression that had so long prevailed, but also of the change which was taking place. The feeling of sympathy was also quickened by the sense of common danger which followed the French invasion of Mexico. And later, when Spain went to war with the republics on the west coast of South America, the good offices of the United States were employed for the purpose of bringing about a termination of the conflict.

This was done by means of a conference, which was opened at the Department of State at Washington, on October 28, 1870, under the presidency of Hamilton Fish, who was then Secretary of State. Representatives of Spain, Peru, Chile, and Ecuador attended. And on April 11, 1871, the contending parties agreed upon an armistice which was to continue indefinitely, and which could not be broken by any of the belligerents except after three years' notice given through the government of the United States of its intention to renew hostilities. During the continuance of this armistice all restrictions on neutral commerce which were incident to a state of war were to cease. Mr. Fish signed these articles "in the character of mediator."

This important act affords a notable illustration

of the change which had supervened in the relations between the United States and the other independent nations of this hemisphere. But it was only an augury of what was to take place in the future.

Towards the close of the decade in which the perpetual armistice was signed there broke out what is commonly known as the War of the Pacific between Chile on the one side and Peru and Bolivia on the other. This unfortunate conflict naturally revived the thoughts which had so often been cherished of the formulation of a plan for the preservation of peace among the American nations. A step in this direction was taken when, on September 3, 1880, the representatives of Chile and Colombia, on the initiative of the latter, signed at Bogotá a treaty by which they bound themselves "in perpetuity to submit to arbitration . . . all controversies and differences" of every nature whatsoever which could not be settled by diplomacy. And it was further agreed that if they should be unable to concur in the choice of an arbitrator the arbitral function should be discharged by the President of the United States—a provision which bore eloquent testimony to the growth of friendly sentiments. The two governments further engaged at the earliest opportunity to conclude similar conventions with the other American nations to the end, as they said, "that the settlement by arbitration of each and every international controversy shall become a principle of American public law." On the strength of the sign-

ing of this treaty the Colombian government, on October 11, 1880, issued an invitation for a conference to be held at Panama; but, as Chile and Peru continued at war, action upon the invitation was deferred.

The project, however, was not abandoned. On November 29, 1881, James G. Blaine, as Secretary of State, extended, in the name of the President of the United States, "to all the independent countries of North and South America an earnest invitation to participate in a General Congress to be held in the City of Washington on the twenty-fourth day of November, 1882, for the purpose of considering and discussing the methods of preventing war between the nations of America." "To this one great object," Blaine declared it to be the desire of the President that "the attention of the congress should be strictly confined." The continuance of the war between Chile and Peru led to the subsequent withdrawal of this invitation. But, in reality, the accomplishment of its great design was only postponed, for, after the submission and consideration from time to time of many proposals, the Congress of the United States, at length, by an act of May 25, 1888, authorized the President to invite the republics of Mexico, Central and South America, Haiti, Santo Domingo, and the empire of Brazil, to join the United States in a conference to meet at Washington on October 2, 1889. The subjects proposed for the consideration of the conference were: (1) Measures

tending to preserve the peace and promote the prosperity of the American nations; (2) measures towards the formation of a customs union; (3) the establishment of frequent communications between the various countries; (4) uniform customs regulations; (5) a uniform system of weights and measures; (6) laws for the protection of patents, copyrights, and trade-marks; (7) extradition; (8) the adoption of a common silver coin; (9) the formulation of "a definite plan of arbitration of all questions, disputes, and differences that may now or hereafter exist" between the American nations, "to the end that all difficulties and disputes between such nations may be peaceably settled and wars prevented."

When the conference assembled Mr. Blaine again occupied the post of Secretary of State. His address of welcome to the delegates was worthy of the occasion, and he was chosen to preside over the deliberations of the assembly. This was the first of what have come to be distinctively known as the International American Conferences, of which four have already been held. The fifth would have met in Santiago, Chile, in 1914, but for the breaking out of the unfortunate conflict in Europe.

The first conference continued to sit until the 19th of April, 1890. Various important international agreements were formulated. Among these, one of the most notable was the plan for international arbitration, which was adopted on April 18, 1890. By this plan it was declared that arbitration as a

means of settling disputes between the American nations was adopted "as a principle of American international law"; that arbitration should be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity and enforcement and construction of treaties; and that it should be equally obligatory in all other cases, whatever might be their origin, nature, or object, with the sole exception of those which, in the judgment of one of the nations involved in the controversy, might imperil its independence. But it was provided that even in this case, while arbitration for that nation should be optional, it "should be obligatory upon the adversary power." As yet this plan represents but an aspiration, since it failed to receive the approval of the governments whose representatives adopted it. In connection with it there was also adopted a declaration against the acquisition of title by conquest, which was designed to form, in effect, an integral part of the arbitral plan.

An agreement destined to produce practical results was that by which was constituted the Bureau of the American Republics, now known as the Pan-American Union. This organization, after twenty years of active usefulness, had the good fortune to be installed at Washington in a building which is one of the finest examples of architecture in the country.

Another measure that has yielded definite results was the agreement for the prosecution of surveys for

what is popularly known as the Inter-Continental Railway. Although it is not probable that such a railway will in the near future furnish an actual means of transportation between, for instance, New York and Buenos Aires, yet the various links in the chain of railways to which the name of Inter-Continental is applicable have been steadily progressing and many of them are in actual use for purposes of transportation.

A notable event of the first International American Conference was the transformation of the empire of Brazil into the republic of Brazil. This transition from a monarchical to a republican form of government was brought about by a revolution which was substantially bloodless. The wise and patriotic ruler, Dom Pedro II., scarcely more eminent as a statesman than as a student of science and of philosophy, retired without a contest before the demonstration on the part of his people of a desire for a change in the form of their government. There was thus fulfilled the aspiration, manifested in Brazil just a hundred years before, when, in 1789, a movement for independence was started in the state of Minas Geræs by a group of Brazilian students, one of whom had met and talked with Thomas Jefferson in France in 1786. And in this relation it is interesting to note that, by the constitution of Brazil, the republic is forbidden to undertake, directly or indirectly, a war of conquest either by itself or in alliance with another government.

Between the first and the second International Conference of American States an interval of more than eleven years elapsed. The second conference sat in the City of Mexico from October 22, 1901, to January 31, 1902. One of its notable results is the fact that, by means of it, the American nations became parties to The Hague Convention of 1899 for the pacific settlement of international disputes. Moreover, a project of a treaty was adopted for the arbitration, as between American nations, of pecuniary claims. This treaty was signed by the delegations of all the countries represented in the conference. It obligated the contracting parties for a period of five years to submit to the Permanent Court at The Hague all claims for pecuniary losses or damage which might be presented by their respective citizens, when such claims were of sufficient importance to justify the expense of arbitration; but it also permitted the contracting parties to organize a special jurisdiction in case they should so desire.

The Third International American Conference was held in Rio de Janeiro in 1906, and resulted in the conclusion of certain treaties or conventions, two of which may be specially mentioned. One was the convention for the renewal of the treaty concluded at Mexico for the arbitration of pecuniary claims. The other is the convention providing for the creation of what is known as the International Commission of Jurists, to formulate codes of international law for the American nations. This commission held

its first meeting at Rio de Janeiro in the summer of 1912, and was to have held a second meeting at the same place in the summer of 1915. Because of the outbreak of the war in Europe in 1914, this meeting was postponed. At the first meeting the commission was divided into committees, to each of which is entrusted the preparation of drafts of statutes on certain designated subjects. The work of the commission is to be submitted for final approval to the governments concerned or to the International American Conference, and, so far as its provisions may be of general application, it is not improbable that they may be brought before the Peace Conference at The Hague when conditions are such as to admit of the revival of that assembly.

A notable incident of the third conference was the visit of Mr. Root, then Secretary of State of the United States, while on a tour of South America. From his address to the conference the following words have often been quoted:

"We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire, and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights, or privileges, or powers

that we do not freely concede to every American republic."

The Fourth International American Conference was held at Buenos Aires in 1910. It was notable for having finally dealt with all the subjects on its program, including treaties relating to patents, trademarks, and copyrights. A treaty was also made for the indefinite extension of the agreement for the arbitration of pecuniary claims. In the report of the delegates to the fourth conference special reference is made to the harmony which characterized its deliberations. There can be no doubt that, quite apart from the actual work accomplished, the free interchange of views in friendly conference between representative men from all parts of America cannot fail to create a better understanding and to draw closer the relations between the countries concerned. This is indeed one of the chief benefits of the International American Conferences. The process of assimilating or harmonizing legal rules and remedies in countries whose systems of jurisprudence are derived from different sources is necessarily slow and uncertain. But this by no means implies the existence of a serious obstacle to the promotion of a free and beneficial intercourse.

By the diplomatic and consular appropriation act, approved March 4, 1915, the President of the United States was authorized to invite the governments of Central and South America to be represented by their Ministers of Finance and some of their leading

bankers at a conference with the Secretary of the Treasury, at Washington, with a view to establish "closer and more satisfactory financial relations" between their countries and the United States. The invitation was accepted by eighteen governments—namely, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, and Venezuela. The conference met in Washington on Monday, May 24, 1915, and adjourned on the following Saturday. It was called the Pan-American Financial Conference, and was attended not only by the foreign official delegates, but also by the members of the diplomatic corps from Central and South America, by the Secretary of State of the United States and other members of the cabinet, by the chairmen of the foreign affairs committees of the Senate and House, by the assistant secretaries of the Treasury, by the members of the Federal Reserve Board and officers of the Federal Reserve Banks, by members of the Federal Trade Commission, and by representative bankers and business men from all parts of the United States. It was presided over by the Hon. W. G. McAdoo, Secretary of the Treasury.

The immediate occasion of the assembly was the derangement of commerce and finance by the great European war, the effects of which were acutely felt not only in the dislocation of exchanges between Europe and America, but also in the relations be-

tween the American countries themselves, which, although their interdependence had been greatly increased, found it necessary to make numerous readjustments. The original program embraced the monetary and banking situation, the financing of public improvements and private enterprises, the extension of inter-American markets, and the improvement of transportation facilities, including postal exchanges, money-orders, and the parcels post. For the purpose of considering these questions the members of the conference were assigned to group committees, such a committee being created for each country. The reports of these committees, which show that, next to transportation, the subjects that attracted most attention were improved banking facilities and the extension of credits, were referred to a general committee on uniformity of laws relating to trade and commerce, which was charged with the duty of reporting upon the subjects with which the conference should deal and the organization necessary to carry the resolutions of the conference into effect. The report of this committee, which was unanimously adopted by the conference, included, in the order here given, seven subjects: (1) the establishment of a gold standard of value; (2) bills of exchange, commercial paper, and bills of lading; (3) uniform (*a*) classification of merchandise, (*b*) customs regulations, (*c*) consular certificates and invoices, (*d*) port charges; (4) uniform regulations for commercial travellers; (5) further legislation con-

cerning trade-marks, patents, and copyrights; (6) the establishment of a uniform low rate of postage and of charges for money-orders and parcels post, and (7) the extension of the process of arbitration, by chambers of commerce and other agencies, of private commercial disputes. Because of variances of view as to methods and measures and the complications of local legislation the subject of marine transportation, in spite of the deep and general interest which it excited, was not for the moment placed upon the program.

For the purpose of carrying its resolutions into effect the conference recommended the establishment of an International High Commission, to be composed of not more than nine members resident in each country, to be appointed by the Minister of Finance of such country, these local bodies, composed of jurists, financiers, and technical administrators, constituting the national sections of the International High Commission. This recommendation was promptly carried into effect in the countries concerned; and by the act of Congress of February 7, 1916, the United States section was endowed with a specific legislative status.

The International High Commission, which, besides carrying on its work locally through various national sections, had conducted its work internationally by exchange of correspondence, held its first general meeting at Buenos Aires from April 3 to April 12, 1916. The program included, in addi-

tion to those acted upon by the Washington conference, six different subjects: (*a*) international agreements on uniform labor legislation; (*b*) uniformity of regulations concerning the classification and analysis of petroleum and other mineral fuels with reference to national policy on the development of natural resources; (*c*) the betterment of transportation facilities between the American countries; (*d*) banking facilities, extension of credit, financing public and private enterprises, and the stabilization of international exchange; (*e*) telegraph facilities and rates, and the use of wireless telegraphy for commercial purposes; (*f*) uniform legislation as to conditional sales and chattel mortgages. All these topics were discussed and were the subject of reports by appropriate committees.

The International High Commission, at its meeting in Buenos Aires, besides dealing with questions of finance and administration, constituted a Central Executive Council for the purpose of systematizing and co-ordinating its work, carrying out its recommendations, and preparing the programs of future meetings. This council consists of three members—a president, vice-president, and a secretary-general. These three places are occupied by the chairman, vice-chairman, and secretary of the national section of the country chosen for the time being as headquarters of the International High Commission. On motion of a member from Argentina, Washington was unanimously designated as the headquarters of

the commission till the next meeting, and the chairman, vice-chairman, and secretary of the United States section thus became the constituent members of the Central Executive Council.

The Central Executive Council, on entering upon its labors, decided that the best plan of procedure would be, while pressing the work of the conference as a whole, to select certain subjects for more immediate, definite treatment. With this view, it selected five subjects: (1) The establishment of an international gold clearance fund; (2) an international agreement to facilitate the work of commercial travellers; (3) legislation concerning negotiable instruments (including The Hague rules on bills of exchange), checks and bills of lading and warehouse receipts; (4) the arbitration of commercial disputes; (5) the ratification of the conventions adopted by the Fourth International American Conference at Buenos Aires in 1910 on trade-marks, copyrights, and patents.

In pursuance of this plan the Central Executive Council has formulated drafts of treaties concerning commercial travellers and the establishment of an international gold clearance fund, and these drafts have been submitted through the Department of State of the United States to the governments concerned, together with explanatory memoranda.

In December and January, 1915–16, there was held at Washington the Second Pan-American

Scientific Congress, the first having been held in Santiago, Chile, in December and January, 1907–08.

The Washington Congress, which was presided over by His Excellency Eduardo Suárez Mujica, ambassador of Chile and chairman of the Chilean delegation, embraced in its program anthropology and allied subjects; astronomy, meteorology, and seismology; conservation of natural resources, agriculture, irrigation, and forestry; education; engineering; international law, public law, and jurisprudence; mining and metallurgy, economic geology, and applied chemistry; public health and medical science; transportation, commerce, finance, and taxation. In order to discuss these subjects the Congress, whose sessions opened on the 27th of December and closed on the 8th of January, was divided into nine sections and forty-five subsections.

In an address before the Southern Commercial Congress at Mobile, Alabama, October 27, 1913, President Wilson, recurring to the subject of Pan Americanism, said that the future was "going to be very different for this hemisphere from the past"; that the states lying to the south would be "drawn closer to us by innumerable ties," and, he hoped, chief of all, by the tie of a common understanding, into a spiritual union, so that the opening of the Panama Canal would open the world to "a commerce that she has not known before, a commerce of intelligence, of thought and sympathy between North and South." The states of Latin America

were, he said, also going to see an emancipation from subordination to foreign enterprise, such as had resulted from the granting of "concessions" to foreign capitalists. The United States "ought to be the first to take part in assisting in that emancipation." "Human rights, national integrity, and opportunity as against material interests"—this was the issue to be faced. The United States, he declared, would "never again seek one additional foot of territory by conquest." Making "honorable and fruitful use" of what she already had, she "must regard it as one of the duties of friendship to see that from no quarter are material interests made superior to human liberty and national opportunity," the true relationship of the Americas being that "of a family of mankind devoted to the development of true constitutional liberty."

Speaking in a similar strain, Secretary Lansing, in addressing the Second Pan American Scientific Congress, finely observed that the "essential qualities" of Pan Americanism were "those of the family—sympathy, helpfulness, and a sincere desire to see another grow in prosperity, absence of covetousness of another's possessions, absence of jealousy of another's prominence, and above all absence of that spirit of intrigue which menaces the domestic peace of a neighbor"; that, while the Monroe Doctrine is the "national policy of the United States," Pan Americanism is the "international policy of the Americas"; that Pan Americanism "extends beyond

the sphere of politics and finds its application in the varied fields of human enterprise"; that it is "an expression of the idea of internationalism" and the "most advanced" and "most practical form of that idea," and has been "made possible" by our "geographical isolation," "similar political institutions," and "common conception of human rights."

Nevertheless, when one surveys the actual relations between the countries of the Western Hemisphere he cannot be blind to the fact that, as elsewhere in the world, the power and influence which nations wield tend to be proportionate to their population and resources, their political stability, and their financial strength; and that, although the term Pan Americanism is often said to denote a union of independent and co-equal American commonwealths, some of the members occupy a special position. This is clearly the case with Cuba and with Panama under the treaties, coeval with their origin, by which the United States guarantees their independence, subject to specified conditions. Special situations, partly conventional, but also partly *de facto*, have since come to exist in Nicaragua, Haiti, and Santo Domingo; and a progressive tendency has been manifested towards the growth of such situations.

We have seen elsewhere that American marines were landed in Nicaragua in August, 1912, and that a detachment remained at the capital for the purpose of lending support to the government in the maintenance of order. In February, 1913, towards

the close of President Taft's administration, a treaty was signed with Nicaragua, granting to the United States the exclusive right to build a canal by what is called the Nicaragua route, as well as the lease of the Corn Islands as a naval station, the United States agreeing to pay $3,000,000. This measure met the approval of the administration of President Wilson; and, after an ineffectual attempt to incorporate in the treaty the terms of the Platt Amendment, a new treaty was signed August 5, 1914, by which the United States acquires, together with the other concessions mentioned, a naval base on the Gulf of Fonseca. This treaty has been ratified. Protests have been made against it by Costa Rica, Honduras, and Salvador, because, as they affirm, it forms an obstacle to Central American union; by Honduras and Salvador, because it infringes their jurisdictional rights in the Gulf of Fonseca; by Costa Rica alone, because Nicaragua, in granting the canal concession without her concurrence, disregarded the terms of President Cleveland's award of May 22, 1888, as to their common boundary.

On the grounds thus jointly or severally maintained by them, Costa Rica and Salvador, in order judicially to test the legality of the treaty, each brought a suit against Nicaragua in the Central American Court of Justice, the international tribunal organized by the Central American states under the treaty of December 20, 1907. This treaty, which was concluded at the Central American Peace Con-

ference held at Washington in that year through the mediation of the United States and Mexico, provided for the creation, as between the Central American states, of an International Court of Justice. The court was duly established, and the published reports of its proceedings now occupy five volumes. In the suits above mentioned it rendered judgment against Nicaragua, holding that the treaty violated existing international engagements and undertook to grant to the United States rights which Nicaragua was not competent alone to convey. Nicaragua declined to accept the decision. The Corn Islands, it may be remarked, are claimed by Colombia. In the award of President Loubet, on the boundary between Colombia and Costa Rica, they are enumerated as belonging to Colombia. Nicaragua, however, was not a party to the arbitration.

In 1911 France, Germany, Great Britain, and Italy made a joint demand on the Haitian government for the settlement of claims within three months or their submission to arbitration. Political conditions then were and thereafter continued to be unsettled. In 1914 revolutionary disturbances occurred; in January, 1915, American troops were landed at Port au Prince. A civil war took place, and the ruling president was compelled to resign and leave the country. Five months later his successor was killed, and American marines were again landed at Port au Prince. They remained; reënforcements were sent, and gradually the military occupation of

the United States was extended to the whole republic and the customs administration was taken over. On September 16, 1915, a treaty was signed, by which the United States agreed by its good offices to aid in the development "of the agricultural, mineral, and commercial resources" of the country, and in the establishment of its finances on a firm and solid basis. The collection and administration of the customs were to be committed to a general receiver and to other persons to be appointed by the President of Haiti, upon the nomination of the President of the United States, while a financial adviser similarly appointed was to be attached to the Ministry of Finance, for the purpose of devising an adequate system of public accounting, increasing and adjusting revenues, inquiring into the validity of debts, and making to the Minister of Finance such recommendations as might be deemed necessary for the welfare and prosperity of the country. Furthermore, the Haitian government engaged to create an efficient constabulary composed of natives, who should, in the first instance, be organized and officered by Americans appointed upon the nomination of the President of the United States. This constabulary was to have the supervision and control of arms, ammunition, and military supplies throughout the country. Haiti also agreed not to surrender any of her territory or jurisdiction by lease or otherwise to any foreign power nor to enter into any treaty or contract such as would impair her independence.

She further undertook to carry out measures of sanitation. The United States engaged to lend efficient aid for the preservation of Haitian independence and "the maintenance of a government adequate for the protection of life, property, and individual liberty." The Senate approved the treaty on February 28, 1916; on May 3d the ratifications were exchanged.

We have elsewhere discussed the treaty concluded with Santo Domingo in 1907 in relation to the collection of the Dominican customs and the discharge of the government's outstanding financial obligations. The results of this voluntary arrangement were highly beneficial to Santo Domingo as well as to her creditors. For some time it also exerted a tranquillizing influence on Dominican politics, but the tendency to unrest eventually reappeared; and in October, 1912, when relations between Haiti and Santo Domingo were disturbed over their unsettled boundary, a force of American marines was sent to protect the customs-houses along the Haitian frontier.

Towards the end of 1913 a step somewhat different and somewhat in advance was taken, when it was announced that, in view of the turbulence prevailing in Santo Domingo, the United States would send thither commissioners to supervise the elections then about to be held. This did not fall within the terms of the existing treaty, but seemed rather to be a development of President Wilson's statement to

Latin America of the 12th of the preceding March, and the Mobile address. The persons to perform the supervisory task were detailed chiefly from Porto Rico. To the protests of the Dominican government, Mr. Bryan, then Secretary of State of the United States, replied that the commissioners would act "as a body of friendly observers." But in the course of time measures of another kind were adopted, when forces were landed for the purpose of opposing a revolutionary change in the Dominican government and restoring order under the supervision of the United States. In a proclamation issued in June, 1916, by the admiral in command of the intervening forces, it was declared that they had entered the republic "for the purpose of supporting the constituted authorities and of putting a stop to revolutions and consequent disorders impeding the progress and prosperity of the country." Any purpose on the part of the United States to "acquire by conquest" Dominican territory or to "attack" the republic's "sovereignty" was disclaimed; but it was declared that the troops would remain "until all revolutionary movements" had been "stamped out," and such "reforms" as were "deemed necessary to insure the future welfare of the country" had been initiated and were "in effective operation." The hope was expressed that "all this" might be "accomplished peacefully and without bloodshed," and "all true Dominican patriots both in public and private life" were called upon to "co-operate . . . to

the fullest extent" in the accomplishment of the objects of the intervention.

In the winter of 1914–15 the representatives of some of the South American countries at Washington were sounded as to the conclusion with the United States of a treaty for the "mutual guarantee of territorial integrity and of political independence under republican forms of government" and for other purposes. Steps were afterwards taken to make the proposal Pan American.

President Wilson, addressing the Second Pan American Scientific Congress, January 6, 1916, observed that, while the Monroe Doctrine placed an inhibition on European governments, it did not disclose what the United States would do "with the implied and partial protectorate which she apparently was trying to set up on this side of the water"; and that "fears and suspicions on this score" had prevented greater intimacy, confidence and trust between the Americas. Latterly there had, he said, been an "interchange of views" between the authorities at Washington and the representatives of the other American states, an interchange "charming and hopeful," because of an "increasingly sure appreciation of the spirit" in which it was undertaken; and those representatives had seen that if America was "to come into her own . . . in a world of peace and order, she must establish the foundations of amity so that no one will hereafter doubt them." Summarizing then, as the means to that end, the

provisions of the proposal above mentioned, he stated that his thought was not only the "international" but also the "domestic" peace of America; that if the American states, or any of them, were "constantly in ferment," there would be a "standing threat to their relations with one another," and that "it is just as much to our interest to assist each other to orderly processes within our own borders as it is to orderly processes in our controversies with one another."

A number of the American governments accepted the proposal "in principle." Some indicated a willingness to go further, but none of them in fact signed the treaty. An unfavorable influence seems to have been exerted by the feeling, which found expression in certain quarters, that the proposal, though strictly reciprocal in terms, involved unequal responsibilities and opportunities. Some, while doubting the disposition of the United States to accept suggestions from other American countries in such matters, seemed to dread lest the treaty might lead to discussions as to whether particular constitutions of government, or even particular administrations, satisfied the condition of republicanism, thus opening the door to constant foreign intrusions into internal affairs. Especially was this the case with those who, while fundamentally questioning the wisdom or the feasibility of undertaking to establish in the Americas a static condition by international action, believed that the attempt to do so would necessarily

involve the exercise over governments of a certain measure of foreign supervision and control; while others yet, holding the opinion that no international need at the moment existed for such a treaty or made its signature urgent, thought that it should not be pressed upon reluctant governments.[1]

No doubt one of the chief impediments to the de-

[1] For an account of this proposal and its reception, including the draft of the proposed treaty, see an article by David Lawrence, in the New York *Evening Post* of April 1, 1916. The draft reads as follows:

"ARTICLE I. That the high contracting parties to this solemn covenant and agreement hereby join one another in a common and mutual guarantee of territorial integrity and of political independence under republican forms of government.

"ARTICLE II. To give definite application to the guarantee set forth in Article I the high contracting parties severally covenant to endeavor forthwith to reach a settlement of all disputes as to boundary or territory now pending between them by amicable agreement or by means of international arbitration.

"ARTICLE III. That the high contracting parties further agree: First, that all questions, of whatever character, arising between two or more of them which cannot be settled by the ordinary means of diplomatic correspondence shall, before any declaration of war or beginning of hostilities, be first submitted to a permanent international commission for investigation, one year being allowed for such investigation; and second, that, if the dispute is not settled by investigation, to submit the same to arbitration, provided the question in dispute does not affect the honor, independence or vital interests of the nations concerned or the interests of third parties.

"ARTICLE IV. To the end that domestic tranquillity may prevail within their territories the high contracting parties further severally covenant and agree that they will not permit the departure from their respective jurisdictions of any military or naval expedition hostile to the established government of any of the high contracting parties, and that they will prevent the exportation from their respective jurisdictions of arms, ammunition or other munitions of war destined to or for the use of any person or persons notified to be in insurrection or revolt against the established government of any of the high contracting parties."

velopment and preservation of relations of amity and intimacy between the United States and the other independent nations of this hemisphere is the want of information as to the conditions which actually exist in the various countries and the consequent prevalence of erroneous impressions in regard to those conditions. As the result of the fact that the countries to the south of the United States have not all a common origin, and that, while all but one formerly belonged to Spain, the largest of them all, Brazil, was once a colony of Portugal, it has become the fashion to group them indiscriminately as "Latin America." The employment of this phrase, although it may be necessary, has tended to confirm two radically erroneous impressions, one being that all the countries called Latin are really Latin; and the other, that all the countries called Latin are alike. In saying this I do not advert to the fact that the supposition seems widely to prevail that Spanish, and not Portuguese, is the language of Brazil. What I mean is that it seems to be generally supposed that in population, in institutions, and in administration they are all alike. In reality, in these respects, and particularly in the constituents of their population, they exhibit as between themselves differences more pronounced than those that exist between the United States and some of them. The circumstance has already been mentioned that Brazil, on severing her connection with Portugal, continued, till 1889, under a monarchical form of

government—a fact that constituted not the slightest hindrance to the maintenance of the most cordial relations with that country.

As a result of the misapprehensions to which I have adverted little has been understood in the United States of the causes of the internal disorders by which some of the American republics have been afflicted. Regarding all Latin-American countries as one, a tendency has existed to assume that government in all of them is equally unstable. That this impression is inaccurate may be demonstrated by a few examples. In more than one of the states of Central America, for instance, revolutions have been frequent and have seemed at times to be chronic, but the very opposite is the case in Costa Rica, sometimes called the "Athens of Central America." Till the recent sudden change of government in that country no revolution had taken place since 1870. Habits of statesmanship had developed there, and when, in 1913, a question arose under their local law as to the presidential succession, the problem was solved in a manner that would have done credit to any country. Her people are intensely devoted to the maintenance of their national independence and are proud of the skill which they have achieved in government. In Chile there has been but one serious civil disturbance in a long stretch of years—namely, the Balmacedist or Congressional Revolution in 1891. Chile has justified the prediction of Bolivar that the spirit of liberty there would never be extin-

guished. In Argentina one government has now for many years followed another in orderly succession. Her capital is one of the world's finest cities and boasts of a press which may well share our admiration with that of Rio de Janeiro. In Brazil, since the sudden governmental change of 1889, there has been but one civil disturbance of serious proportions, and this lasted only a little more than six months. Nor should we forget that there is no country that can boast a constant and assured immunity from disturbances, either domestic or foreign.

I have already adverted to the bloodless character of the transition in Brazil from monarchical to republican government. This fortunate issue may largely be ascribed to the element of idealism which has so often distinguished the political conduct of American statesmen, an idealism which can be fully appreciated only when we reflect upon the struggles in which they at times have been compelled to engage, in their efforts to maintain liberal institutions such as exist in the United States. The same tendency accounts for the peaceful abolition of slavery in South America, and particularly in Brazil, where the system, having gained a strong foothold, tended to linger, but where it was eventually destroyed without forcible resistance. While it would be going too far to say that those whose material interests were directly injured accepted emancipation with universal gratitude, they at any rate accepted it intelligently as a duty to country and to humanity.

Another misconception that more or less prevails in regard to the countries of Latin America is that which relates to the personal integrity of their statesmen. Certain bad examples, which it is unnecessary to enumerate, have served to spread the supposition that the chief cause of revolutions in those countries is the desire for the possession of the custom-houses. Here, as elsewhere, it is necessary to exercise discrimination. Perhaps there is no country in which the desire for the emoluments of office does not influence the conduct of individuals or where the desire even for illicit gains does not furnish an occasional motive. The existence of such conditions and the extent to which they prevail necessarily depend upon the character of the society and the general state of the population. The supposition, however, that in the countries of Latin America a want of integrity in public officials is general involves an error of fact and a serious injustice. Personal integrity is the rule, and not the exception, among the statesmen of the American republics, even outside the United States. I have often thought of one of my colleagues in the Fourth International American Conference, Señor Gonzalo Ramirez, as one of the finest examples I have ever known of public integrity; and I feel at liberty particularly to mention him because he has since passed away. A jurist, a professor in the University of Montevideo, and also a diplomatist, he spent his life largely in public service, holding at the end the im-

portant and responsible position of Uruguayan minister at Buenos Aires. I saw his modest home at Montevideo, whose dimensions betokened a life in which fortune had been sacrificed to fame, and private interest to public duty. At the conference at Buenos Aires he was appointed chairman of the committee on the renewal of the treaties between the American republics for the arbitration of pecuniary claims. At that time he was in the last stage of his fatal illness. In consequence of his infirm physical condition, regular sessions of the committee could not be held, and it was agreed among the members that its meetings should take place at his lodgings at any time during the day or evening when he might notify us that he should be able to preside. He did his share, and, indeed, more than his share of the work of the committee, making himself the first draft of its report. I can see him before me now, seated in an invalid's chair, his mind alert, his interest eager, his sense of duty supreme, devoting the last efforts of his fast-ebbing life to the promotion of justice, mutual respect, and friendship among the American nations.

Many other illustrations might be given, but I will mention only one—the case of the late Baron Rio Branco, of Brazil, who died in February, 1912, after having held the post of Minister of Foreign Affairs for a longer period than a similar position has been held by any other person in this hemisphere. At the time of his decease he was serving under his

fourth President. Having passed many years in the public service, it was a well-known fact that, although he was the son of another eminent Brazilian statesman, he was destitute of private fortune and depended for his support upon the rewards which had been voted by a grateful nation. After his death his library was purchased by the government for the benefit of his family, as an additional mark of the national gratitude.

Lastly, I desire to refer to the misapprehensions which have existed in regard to the Monroe Doctrine. The Third International American Conference, which sat at Rio de Janeiro, was held in what is known as the Monroe Palace, named in honor of the enunciator of the famous American policy. Brazil was one of the first, perhaps the first, of the American nations to applaud that doctrine. The Baron Rio Branco, of whom I have just spoken, was a strenuous asserter of it. But he asserted it, not as the exclusive concern of any one nation, but as the direct and immediate concern of all the American nations. When, therefore, a so-called Anglo-American syndicate, incorporated in one of the States of the United States, proposed, in the exercise of extraordinary political powers and commercial privileges granted by a neighbor of Brazil, to introduce European colonists into the upper reaches of certain affluents of the Amazon, he protested against what he called "the first attempt to introduce in our continent the African and Asiatic system of chartered

companies," or government by foreign "semi-sovereign entities," and took the necessary measures to obtain from the syndicate the renunciation of all rights and claims under its concession, the effect of which was thus completely nullified.

So far as the Monroe Doctrine is held to guard the political system of this hemisphere against external subversion or attack, the American nations cordially accept it and look to the United States as its author and mainstay. In this sense it is eulogized by the statesmen of Latin America. In closing the Fourth International American Conference in 1910, one of Argentina's great orators, who, as Minister of Foreign Affairs, presided as honorary president at the final session, paid an eloquent tribute to American solidarity and to the United States as the proponent of the Monroe Doctrine. "In this year," said Dr. Rodriguez Larreta, "the majority of our republics complete a century of independent life. We can now say, with Washington, 'America for humanity,' because we are sovereign nations and the place we occupy in the world we owe to the strength of our own arms and our blood heroically shed. But let my last words be to send a message of acknowledgment to the great nation which initiated these conferences, which preceded us in the struggle for independence, which afforded us the example of a fruitful people organized as a republican nation, which, on a day memorable in history, declared 'America for Americans,' and covered as with a shield our hard-won independence."

In this sense the Monroe Doctrine is received in South America with sentiments of the most friendly and cordial concurrence. But there is another sense in which the other independent nations, and especially such powerful states as Argentina, Brazil, and Chile, find themselves unable to accept it. This sense, which is said to represent the view of the "man in the street," has been editorially expressed in these terms: "Whatever its interest at stake or wrong suffered in Latin America, we sternly enjoin every European power to keep its hands off of what we make our international business and what we decree must be the business of nobody else." In other words, the United States is said in effect to have decreed that other American countries are so far subject to its control that non-American powers cannot even demand from them the redress of grievances.

Of this view it is to be observed that it must, in the first place, arouse resentment in the independent countries of America, since it places them all in the subordinate position of protectorates, subject to external dictation. And it must, in the second place, provoke the opposition of non-American powers, since they find it difficult to admit that they cannot conduct their affairs directly with states which are professedly, and in law and in fact, independent.

Considered in its practical aspects, the conception appears to be equally superficial and extravagant. The area of the United States embraces less than

three million square miles; and within these limits the national and local governments combined often have difficulty in preserving order and insuring the protection of foreigners, although the territory is within their exclusive legal control. The countries of Latin America comprise an area of more than eight million square miles, or almost three times as much; and over these more than eight million square miles the United States exercises no governmental control. And yet, within this vast area, it is asserted that the protection of aliens and the redress of their grievances is a matter that concerns the United States alone, to the exclusion of any and all of the governments on whose diplomatic protection such aliens would normally rely. The responsibility thus proposed to be thrust upon the United States is unexampled.

Examined historically, the assumption that the American nations are in effect protectorates, with which non-American powers have been denied the right to conduct relations directly, is equally unjustified. In numerous instances, indeed, force has been employed—a contingency to which even the United States might itself be exposed. In the fourth decade of the nineteenth century France and Great Britain blockaded the ports of Buenos Aires and Uruguay. France resorted to reprisals against Mexico in the same decade. From 1846 to 1848 the United States was at war with Mexico for the redress of its own grievances. In 1861, France, Great

Britain, and Spain resorted to reprisals against Mexico without protest. Later, when France (Great Britain and Spain having withdrawn) essayed to set up and maintain a monarchy in Mexico, the United States protested and eventually brought the attempt to an end. The war between Spain and the republics on the west coast of South America has heretofore been mentioned. In 1894 Great Britain seized the port of Corinto, in Nicaragua, to collect an indemnity. In 1903 Germany, Great Britain, and Italy blockaded the ports of Venezuela, with the acquiescence of the United States, it being expressly understood that there should be no permanent occupation or acquisition of Venezuelan territory. These incidents are recalled not for the purpose of advocating or justifying the employment of force in any particular instance, or of intimating that the United States is not justified in exhibiting special concern in regard to what may tend to jeopardize the independence of states for whose preservation it has assumed a contingent responsibility. They are cited only for the purpose of demonstrating that the Monroe Doctrine has not been understood to involve the denial by the United States to other American nations of the primary rights and liabilities of independent states.

The establishment of the relations between independent American states on the basis of mutual confidence, respect, and co-operation is, as has been seen, an aspiration long cherished by generous minds.

But, although this aspiration forms the central thought of Pan Americanism, it is not easily realized. On the contrary, its realization is a highly difficult task beset with complicated problems and intricate obstructions. Nor will the time ever come when it will not afford ample opportunity for the exercise of an informed and discriminating judgment, of well-directed and intelligent helpfulness, and of consideration for the opinions and feelings of others, to say nothing of the reciprocal recognition of rights and occasional forbearance. These qualities, so vital to the preservation of amity and confidence elsewhere, are no less essential in the Western Hemisphere.

References:

Reports of the four International American Conferences, and particularly the Historical Appendix (Vol. IV) to the report of the first conference; the works of Bolivar; Henry Clay and Pan Americanism, *Columbia University Quarterly*, Sept., 1915; Latané's *Diplomatic Relations of the United States and Spanish America*.

The relations between the United States and the other American countries are comprehensively presented in Moore's *Digest of International Law*.

XI

INFLUENCE AND TENDENCIES

NOTHING could have been further from the thoughts of the wise statesmen who guided the United States through the struggle for independence and laid the foundations of the government's foreign policy than the institution of a philosophical propagandism for the dissemination of political principles of a certain type in foreign lands. Although the Declaration of Independence loudly proclaimed the theory of the natural rights of man, they gave to this theory, in its application to their own concerns, a qualified interpretation, and, as practical men, forbore to push it at once to all its logical consequences. On the continent of Europe, the apostles of reform, directing their shafts against absolutism and class privileges, spoke in terms of philosophical idealism, while the patriots of America, though they did not eschew philosophy, debated concrete questions of constitutional law and commonplace problems of taxation. In Europe, the revolution meant first of all a destructive upheaval; in America, where the ground was clear, it meant a constructive de-

velopment. And yet, in spite of this difference, the American Revolution operated as a powerful stimulus to political agitation in Europe. There was in the very existence of American independence, permeated as it was with democratic republicanism, a force that exerted a world-wide influence in behalf of political liberty. Of this fact European statesmen betrayed their appreciation when they deprecated the course of the King of France in subordinating what appeared to them to be a permanent general interest to the gratification of a feeling of enmity towards Great Britain. Spanish diplomatists were not alone in expressing this sentiment. The Emperor Joseph II. of Austria, in a letter to his minister in the Netherlands, in 1787, remarked that "France, by the assistance which she afforded to the Americans, gave birth to reflections on freedom." That the assistance thus given hastened her own revolution, there can be no doubt. Nor did the visible effect of the example of the United States end here. It has been manifest in every European struggle for more liberal forms of government during the past hundred years — in Spain, in Italy, in Germany, and in Hungary. It penetrated even to Russia, where there was found among the papers of one of the leaders who planned a revolution for 1826 a constitution for that country on the model of the Constitution of the United States. And it may also be traced in the lives of those who have striven to

advance, sometimes under adverse and discouraging conditions, the cause of self-government on the American continents.

While the United States refrained from aggressive political propagandism, the spirit of liberty that resulted from its independence was necessarily reflected in its diplomacy. It is true that the attitude of the government on certain special questions was for a long while affected by the survival in the United States of the institution of African slavery. It was for this reason that the recognition of Hayti, Santo Domingo, and Liberia as independent states did not take place till the administration of Abraham Lincoln, although such recognition had long before been accorded by European powers. But the attitude of the United States towards those countries was exceptional, and was governed by forces which neither diverted nor sought to divert the government from the general support of the principles on which it was founded.

The influence of the United States in behalf of political liberty was clearly exhibited in the establishment of the principle, to which we have heretofore adverted, that the true test of a government's right to exist, and to be recognized by other governments, is the fact of its existence as the exponent of the popular will. This rule, when it was announced, appeared to be little short of revolutionary, since it was in effect a corollary of the affirmation made in

the Declaration of Independence, that governments derive their just powers from the consent of the governed, and that, whenever any form of government becomes destructive of the ends for which governments are instituted, it is the right of the people to alter or abolish it and to institute a new government, laying its foundation on such principles and organizing its affairs in such form as to them shall seem most likely to effect their safety and happiness. Nor was the free spirit of American diplomacy less manifest in its opposition to the system of commercial monopoly; in its espousal of the principles of the Monroe Doctrine; or in its advocacy of the freedom of the seas, of the rule that free ships make free goods, and of the exemption of private property at sea from capture. The weight of its influence was also constantly lent in favor of the maintenance of the independence of the countries of the Far East. In the treaty with China of June 18, 1858, made at a time when the Chinese government appeared to be peculiarly friendless, we find the remarkable stipulation that "if any other nation should act unjustly or oppressively" towards that country, the United States would "exert its good offices, on being informed of the case, to bring about an amicable arrangement of the question, thus showing their friendly feelings."

But, besides exerting an influence in favor of liberty and independence, American diplomacy was also employed in the advancement of the principle of legality.

American statesmen sought to regulate the relations of nations by law, not only as a measure for the protection of the weak against the aggressions of the strong, but also as the only means of assuring the peace of the world. The conception of legality in international relations lay at the foundation of the system of neutrality, which was established during the administration of Washington. It also formed the basis of the practice of arbitration, which was so auspiciously begun at the same time. Half a century later it received an accession of strength in the development of the process of extradition. It is true that in the development of this process in modern times the credit of the initiative belongs to France; but, beginning with the Webster-Ashburton treaty of August 9, 1842, the United States, at an important stage in the history of the system, actively contributed to its growth by the conclusion of numerous conventions. The twenty-seventh article of the Jay treaty provided for the surrender of fugitives charged with murder or forgery; but it proved to be for the most part ineffective, and expired by limitation in 1808. The Webster-Ashburton treaty provided for the extradition of fugitives for any of seven offences, and proved to be efficacious. Similar treaties with other countries were soon afterwards made, ten being concluded while William L. Marcy was Secretary of State, during the administration of Pierce. Since that time our extradition arrangements have grown

both in number and in comprehensiveness. We cannot afford, however, to rest on our laurels. In recent times other nations, and especially Great Britain since 1870, observing the propensity of criminals to utilize improved facilities of travel, have by legislation as well as by negotiation vastly increased the reach and efficiency of the system. It will therefore be necessary, if we would fulfil the promise of our past and retain a place in the front rank, steadily to multiply our treaties and enlarge their scope. No innovation in the practice of nations has ever more completely discredited the woful predictions of its adversaries than that of surrendering fugitives from justice. The Webster-Ashburton treaty was loudly denounced as a mere trap for the recovery of political offenders. Other treaties encountered similar opposition. In no instance have these direful forebodings been justified by the event.

American diplomacy has also been characterized by practicality. It has sought to attain definite objects by practical methods. Even in its idealism, as in the advocacy of the exemption of private property at sea from capture, it has shown a practical side. The same disposition has been exhibited in the American consular service. Consuls have been described by publicists as agents of commerce; but for a long while their functions were passive rather than active, and to some extent were ornamental. The government of the United States conceived the idea

of employing its consuls not only for the protection of commerce, but also for its extension. In 1880, while Mr. Evarts was Secretary of State, there was begun the monthly publication of consular reports, which has been continued with useful results up to the present time. The example thus set has been followed in other countries, so that we find to-day among the publications of the British, French, and German governments consular reports on the commerce and industries of foreign countries. In 1897, on the recommendation of Mr. Frederic Emory, then chief of the Bureau of Foreign Commerce of the Department of State, the usefulness of the American series was greatly enhanced by the establishment of the system of publishing daily advance sheets of the monthly issues. It is obvious that this development constituted a highly important step towards making the consular service of practical value to the business interests of the country.

American diplomacy has also exerted a potent influence upon the adoption of simple and direct methods in the conduct of negotiations. Observant of the proprieties and courtesies of intercourse, but having, as John Adams once declared, "no notion of cheating anybody," American diplomatists have usually relied rather upon the strength of their cause, frankly and clearly argued, than upon a subtle diplomacy, for the attainment of their ends. Indeed the framework of government adopted in the United

States, by which important powers affecting, both directly and indirectly, the control of foreign affairs were confided to the Senate and to the Congress, was not understood to admit of the practice of secrecy and reserve, such as characterized the diplomacy of monarchs whose tenure was for life and who were unvexed by popular electorates and representative assemblies. Hence, as it was in the beginning, so American diplomacy in the main continued to be a simple, direct, and open diplomacy, the example of which has had much to do with shaping the development of modern methods. Nor should we forbear to remark that while it has, by reason of the directness with which it expresses its sentiments, sometimes been disrespectfully dubbed "shirt-sleeves" diplomacy, it may confidently invite a comparison as to the propriety of its speech and conduct with the diplomacy of other nations.

In at least one instance, however, the attempt at simplicity was carried further than in the end proved to be practicable. Washington, while President, once observed that, although he was not accustomed to impede the dispatch of business "by a ceremonious attention to idle forms," it would not be prudent for a young state to dispense altogether with rules of procedure which had "originated from the wisdom of statesmen" and were "sanctioned by the common consent of nations." But Jefferson, late in his first administration, sought to abolish all social forms and precedence. The occasion of this action

was the claim of Mrs. Merry, the wife of the British minister, of the right to be taken in to dinner by the President. In order to avoid this claim, Jefferson adopted what he called the rule of pell-mell, the meaning of which was that no particular place was to be assigned to anybody, but that each was to take what was at hand; and he sought to enforce this measure not only at his own entertainments, but also on all public occasions, such as inaugurations. This innovation was hotly resented by certain members of the diplomatic corps, and gave rise to controversies which, by reason of their spicy and entertaining quality, have enjoyed a prominence out of proportion to their historical importance. Experience soon demonstrated that social equality was not always best assured by committing the determination of questions of etiquette to individual inclination and enterprise, which perchance might seek in confusion an undue exaltation. No one could have more fully exemplified simplicity in character and in bearing than did President Madison; but on entertaining the new British minister, F. J. Jackson, in 1809, he settled the question of procedure by escorting Mrs. Jackson to dinner, while Jackson took in Mrs. Madison. Nothing could better illustrate Madison's indifference to forms than his official reception of Jackson on the latter's presentation. The affair was conducted in the same manner as a private meeting between gentlemen. After Jackson was introduced, Madison asked him to have a chair, and,

says Jackson, while they were talking a negro brought them "some glasses of punch and a seed-cake."

The effect of democratic tendencies on American diplomacy is seen in the course of the government of the United States with regard to diplomatic uniform. As early as 1817 American ministers had a prescribed dress which was fixed by the mission at Ghent. This dress consisted of a blue coat lined with white silk; a straight cape, embroidered with gold, and single-breasted; buttons plain, or, if they could be had, with the artillerist's eagle stamped upon them; cuffs embroidered in the same manner as the cape; white cashmere breeches; gold knee-buckles; white silk stockings, and gold or gilt shoe-buckles; a three-cornered chapeau bras, not so large as that used by the French nor so small as that used by the English; a black cockade with an eagle attached, and a sword. On gala-days and other occasions of extraordinary ceremony the American ministers were allowed to wear more embroidery, as well as a white ostrich-feather, not standing erect, but sewed around the brim, in their hats. A description of the costume, together with a plate, was given to the minister as a part of his instructions. At the beginning of the administration of President Jackson the prescribed uniform was changed so that it consisted of a black coat, with a gold star on each side of the collar near its termination; underclothes of black, blue, or white, at the option of the wearer; a three-cornered chapeau

bras; a black cockade and eagle; and a steel-mounted sword with a white scabbard. This dress, which was supposed to correspond with the simplicity of American institutions, was recommended but not prescribed. These instructions were, however, done away with by a circular issued by William L. Marcy, as Secretary of State, on June 1, 1853, by which American ministers were desired, as far as practicable without impairing their usefulness, to appear at court "in the simple dress of an American citizen." If this could not be done without detriment to the public interest, the nearest approach to it, compatible with the requisite performance of duties, was earnestly recommended. "The simplicity of our usages and the tone of feeling among our people is," said Marcy, "much more in accordance with the example of our first and most distinguished representative at a royal court than the practice which has since prevailed. It is to be regretted that there was ever any departure in this respect from the example of Dr. Franklin." Wharton, in his *International Law Digest*, states that the dress worn by Franklin "was Quaker full dress, being court dress in the time of Charles II."; it was, at any rate, comparatively simple. The experiences of the American ministers in carrying out Marcy's instructions were varied. The greatest difficulty was encountered by Buchanan, at London, where his proposal to appear at court without some mark indicative of his rank was the subject of peremptory objection. He

finally compromised upon appearing in the dress which he wore at the receptions of the President of the United States, with the addition of a very plain black-handled and black-hilted dress sword. With this addition, he declared that he never felt prouder as a citizen of his country than when he stood amid the brilliant circle of foreign ministers and other court dignitaries "in the simple dress of an American citizen." At Paris, Henry S. Sanford, who was then acting as *chargé d'affaires ad interim* of the United States, was permitted to appear at the Tuileries in citizen's dress. When, however, the new minister, John Y. Mason, arrived, he decided, after consultation with the French officials, to adopt a uniform, and had a costume devised which was described by Sanford as "a coat embroidered with gilt tinsel, a sword and cocked hat, the invention of a Dutch tailor in Paris, borrowed chiefly from the livery of a subordinate *attaché* of legation of one of the petty powers of the Continent." Sanford, conceiving Mason's conduct to involve an oblique censure of his own course, resigned his position as secretary in disgust.

At The Hague, August Belmont was permitted to appear in citizen's dress, although it was stated that his appearance in uniform "would have been better liked." At Lisbon, John L. O'Sullivan appeared at court in "an ordinary evening suit," consisting of a blue coat and black trousers, with "a simple American button" indicating his representative capacity. At Berlin it was declared that the King "would not

consider an appearance before him without costume respectful"; and the American minister thereupon provided himself with a court dress which he described as "very plain and simple." At Stockholm, the King expressed his willingness to receive the representative of the United States in an audience for business in any dress his government might prescribe, but added, "In the society of my family and on occasions of court no one can be received but in court dress, in conformity with established custom." The minister therefore appeared at court in the costume which he had previously worn. By a joint resolution, approved March 27, 1867, Congress prohibited persons in the diplomatic service of the United States "from wearing any uniform or official costume not previously authorized by Congress." By Section 34 of the act of July 28, 1866, however, officers who have served in the Civil War as volunteers in the armies of the United States are authorized to bear their official title, and upon occasions of ceremony to wear the uniform of the highest grade they have held, by brevet or other commissions, in the volunteer service. In spite of these statutes, diplomatic officers of the United States, while not adopting what might be called a uniform, have often worn, as Buchanan did in London, some article of apparel suggestive of their official station and rank.

The subject of diplomatic dress has been introduced, not because it was in itself of great moment, but because it illustrates the development of that

democratic spirit, often described in contemporary writings as "American feeling," which was perhaps most ebullient in the middle of the last century. Since that time great changes have taken place, and with the increased complexity of social activities, the extraordinary growth of private fortunes, and the wonderful advance of the nation as a whole in wealth and power, simplicity has become less and less a distinctive trait of the life of the Republic, either at home or abroad. On the other hand, there has grown up a visible tendency towards conformity to customs elsewhere established, and the progress of this tendency has been accelerated by the natural drift of a great and self-conscious people towards participation in what are called world-affairs.

The first joint international treaty, with reference to a question not distinctively American, to which the government of the United States became a party, was the convention concluded on October 22, 1864, jointly with Great Britain, France, and the Netherlands, in relation to the payment by Japan of the Shimonoseki indemnity. Three years later a joint convention was concluded between the same powers and Japan for the establishment of tariff duties in the latter country. By reason of a common interest, the United States was thus led in the Far East to depart from its usual policy of making only separate or independent agreements with other nations. No similar departure had then been made in China, but

the policy of concerted action with other powers had already been entered upon in that country as well as in Japan—a policy which has eventuated in the allied march to Peking in 1900 and in the conclusion of the convention of September 7, 1901, between the allies and China. This convention, which embraces questions of politics as well as of commerce, is the most comprehensive joint arrangement to which the United States has ever become a signatory. The United States has, however, as a member of the great family of nations, become a party to other joint international agreements, such as the Geneva convention for the amelioration of the condition of the wounded in the field; the convention for the protection of submarine cables outside territorial waters; the Madrid convention with reference to the protégé system in Morocco; the international union for the protection of industrial property; the international postal union; and the treaties concluded at The Hague with reference to the laws and customs of war on land, the adaptation to maritime warfare of the principles of the Geneva convention, and the pacific adjustment of international disputes.

Intimacy of association, though it does not destroy the spirit of emulation, tends to produce uniformity in manners and customs. Of the operation of this rule, a striking example may be seen in the act of Congress by which provision was made for the appointment of ambassadors. Prior to the passage of this act it had been assumed to be undesirable to in-

troduce into the American diplomatic service a grade of officials deriving extraordinary ceremonial privileges from the fact that they were supposed in a peculiar sense to represent the "person" of the "sovereign." William L. Marcy, when Secretary of State, naturally declined to recommend the creation of such a class. Secretary of State Frelinghuysen, viewing the matter in a practical light, thought it would be unjust to American ministers to increase their rank without raising their salaries, and that Congress could not with propriety be asked to make them "an allowance commensurate with the necessary mode of life of an ambassador." Mr. Bayard, who was afterwards to become the first American ambassador, declared, when Secretary of State, that "the benefits attending a higher grade of ceremonial treatment" had not "been deemed to outweigh the inconveniences which, in our simple social democracy, might attend the reception in this country of an extraordinarily foreign privileged class." Nevertheless, in 1893 the higher grade was introduced. For this measure it will scarcely be claimed that there was any necessity. In the days before American ambassadors existed, a visitor to London sought to learn who was the most important "ambassador" at the English court. A European member of the diplomatic corps, to whom the inquiry was addressed, promptly responded, "the American minister." From time to time, however, American representatives abroad, wishing to enjoy the ceremonial privi-

leges of the ambassadorial rank, recommended its creation; and eventually their recommendation was adopted. But it was done without any increase of compensation, so that to-day none but a man of fortune can afford to be an American ambassador. When we scan the list of those who have thus far held the position, it is not difficult to believe that the Republic has as yet suffered no detriment by reason of this moral limitation upon the choice of its agents; but the creation of conditions under which persons of moderate means are excluded from the highest public employments, except at a sacrifice which they can ill afford to make or cannot make at all, is not in harmony with what have been conceived to be American ideals.

To this incongruity it is within the power of Congress at any time to apply a corrective; but there is yet another innovation the remedy for which lies with the executive branch of the government. Among the extraordinary privileges commonly said to belong to the ambassador, by reason of his representing the "person" of the "sovereign," is that of personal audience on matters of business with the head of the state. In Europe, with the substitution of constitutional governments for absolute monarchies, this privilege had become merely nominal, but in Washington it was revived in something like its pristine rigor, direct intercourse with the President, without regard to the Secretary of State, having frequently been demanded and practised. In

the days when the highest rank was that of envoy extraordinary and minister plenipotentiary, the privilege of transacting diplomatic business directly with the President was rarely accorded to a foreign minister, not only because the time of the President was supposed to be already sufficiently occupied, but also because the White House is not an office of record, the custodian of the diplomatic archives being the Secretary of State, who is the legal organ and adviser of the President in foreign affairs, and who, by reason of his preoccupation with the business of his own department, is supposed to possess that mastery of its details which is so essential to the care of public as well as of private interests. The President, with his multifarious duties and responsibilities, is certainly entitled to all the freedom of discretion which the rulers of other countries enjoy with regard to the direct management of diplomatic business.

But without regard to methods, which from time to time may change, there is no doubt that the importance of the United States as a factor, not in the "concert of Europe," but in that wider concert which embraces all civilized powers, Eastern as well as Western, is destined to grow. In 1871 a conference at Washington, presided over by the Secretary of State, resulted in the conclusion of a permanent truce between Spain and the allied republics on the west coast of South America, thus formally ending an unfortunate conflict in the Western

Hemisphere. In 1905 the whole world rang with praise of the President of the United States, who lent his good offices for the opening of negotiations to terminate the titanic struggle between Russia and Japan in the Far East. From his fortunate station as the head of a great power holding itself aloof from any connection with the political issues involved he was able to speak with an impartial and authoritative benevolence which no other ruler could invoke.

Judged by phrases current at the time, there prevailed, after the war with Spain, a disposition to assume that the United States would, as the result of that conflict, break with its past and enter upon a new career in which previous guides and limitations would be discarded. This hasty supposition was by no means strange. On the contrary, it was merely an illustration of a common phase of thought, which is constantly manifested in the tendency to regard existing things, no matter how lacking in essential novelty they may be, as wholly new, and, as a natural consequence, to estimate them in an absolute rather than in a relative sense. But, in the acquisition of Porto Rico and the establishment of a virtual protectorate over Cuba, there was nothing to jar the nerves of even the most cursory reader of American history, while the acquisition of the Philippines could not be altogether startling to one who had reflected upon the detached situation of remote Alaska, with its chain of islands flung across the

Pacific, or upon the incongruous condominium which had for a number of years been attempted in the Samoan group in the distant South Pacific. It is, therefore, not surprising that abnormal vaticinations and proposals due to excitement or to a want of information gradually faded away, while realities, with the aid of a certain continuity in thought and in temper on the part of the less vocal element of the population, eventually regained their normal sway.

In the relations of the United States with Europe after 1898 there were, if we except acts such as the termination of the commercial treaty with Russia in 1912 because of the Jewish question, and the adjustment of questions relating to Liberia with France, Germany, and Great Britain, few striking developments prior to 1914. In the Anglo-Boer war neutrality was, as usual, maintained. At the Peace Conference at The Hague in 1899 the United States delegation, in signing the Convention for the Pacific Settlement of International Disputes, made, as has been seen, the express reservation that the treaty was not to be construed as requiring the United States "to depart from its traditional policy of not intruding upon, interfering with, or entangling itself in the political questions or policy or internal administration of any foreign state," or to relinquish "its traditional attitude towards purely American questions." When, in 1907, the convention was renewed, the Senate reaffirmed this reservation in its

original terms. Likewise, in approving the Act of Algeciras (1906) in relation to Morocco, the Senate declared that it was done solely for "commercial and friendly purposes," and without any purpose "to depart from the traditional American foreign policy which forbids participation by the United States in the settlement of political questions which are entirely European in their scope." Had The Hague Convention of 1907, respecting the rights and duties of neutral powers and persons in case of war on land, required the contracting parties to resist by force any attempt to violate its provisions, it would have received few, if any, votes in the United States Senate. Unlike the treaty of 1839, by which certain European powers undertook to assure the neutrality of Belgium, it is a concurrent declaration of general principles, not savoring of an alliance to compel their observance. While it declares that "a neutral power resisting, even by force, attempts to violate its neutrality," cannot be regarded as committing a hostile act, yet it does not purport to give to a state desirous to remain neutral an assurance of protection against a declaration of war. Colonel Roosevelt, under whose administration as President the treaty was ratified by the United States, was, therefore, altogether justified in declaring, in September, 1914, that the United States had not "the smallest responsibility" for what had befallen Belgium. The situation of the United States in this regard was, as he pointed out,

essentially different from that of England, one of the parties to the treaty of 1839.[1]

Since 1914, however, various proposals, inspired by the horrors attending the great conflict which broke out in Europe in that year, have been put forward for the formation of leagues or alliances with the design of preventing the recurrence of such a calamity. These proposals differ in their statement of details, but are to a great extent alike in suggesting an international combination for the use of force for the accomplishment of the end in view. This conception is enlarged in President Wilson's peace proposal of December 18, 1916, in which he suggests "the formation of a league of nations to

[1] While declaring that, when Belgium was invaded, "every circumstance of national honor and interest forced England to act precisely as she did act," and quoting in this relation passages referring to England's position as a party to the neutralization of Belgium under the treaty of 1839, Colonel Roosevelt said:

"A deputation of Belgians has arrived in this country to invoke our assistance in the time of their dreadful need. What action our government can or will take I know not. It has been announced that no action can be taken that will interfere with our entire neutrality. It is certainly eminently desirable that we should remain entirely neutral, and nothing but urgent need would warrant breaking our neutrality and taking sides one way or the other. . . . We have not the smallest responsibility for what has befallen her (Belgium), and I am sure that the sympathy of this country for the suffering of the men, women, and children of Belgium is very real. Nevertheless, this sympathy is compatible with full acknowledgment of the unwisdom of our uttering a single word of official protest unless we are prepared to make that protest effective; and only the clearest and most urgent national duty would ever justify us in deviating from our rule of neutrality and non-interference" ("The World War: its Tragedies and its Lessons," *The Outlook*, Sept. 23, 1914, pp. 169–170, 173).

insure peace and justice throughout the world"; and in his address to the Senate of January 22, 1917, in which he declares that the people of the United States desire and are in honor bound to render a "service" to mankind, "nothing less than this, to add their authority and their power to the authority and force of other nations to guarantee peace and justice throughout the world."[1]

The plans and proposals put forward since 1914, like those published from time to time in previous years, present, so far as concerns their central thought, nothing to surprise the student of such subjects. The assurance of peace by means of a concert of nations, designed to moderate or to control the propensity of men in the mass to gain their ends by violence, has stimulated the speculations of philosophers and baffled the skill of statesmen since the dawn of international relations. The general statement of such a design offers no difficulties; but the definite formulation of a plan to render the design effective would involve, no less than heretofore, the consideration of questions both numerous and varied, concerning which it would be as unsafe to count upon a ready unanimity of sentiment and of opinion as to presuppose the sudden cessation of the human wants and human passions in which wars have immemorially originated. The extent to which divisions of sentiment and of opinion would occur probably would bear an appreciable relation

[1] Supra, pp. 83–86.

to the extent to which it was proposed to deal with questions of a contentious nature, such as national and racial groupings and other political arrangements, and above all that prolific and continuing source of strife—commercial and industrial competition. Moreover, when we remember that force and its effective exercise are subject to physical limitations, and that proximity and remoteness, by which all human relations are so profoundly affected, have often been recognized as furnishing the test and the measure of political and other interests, it is not strange that the readiness to assume and even more to perform responsibilities, or to admit others to share them, has not infrequently been found to depend upon considerations of that character, as well as upon other conceptions, in regard to which habits of thought have more or less been formed and preserved. Even in the United States, where "society" is sometimes slightingly said to "lack traditions," such habits are not unknown in public affairs. We have seen that when the Executive Council of France, during the turbulent aftermath of the great revolution, proposed through Genet to replace the then existing alliance with the United States with an agreement "to defend the empire of liberty wherever it may be embraced," and "to guaranty the sovereignty of the people,"[1] the proposal was not entertained. In the circumstances the proposal was not inexplicable. In making it

[1] *American State Papers, Foreign Relations*, folio, I, 705, 708–709.

the Executive Council frankly stated that, besides "the advantages which humanity in general" would draw from such a measure, France had a "particular interest" in preparing to act against England and Spain, who were believed to be about to attack her, because of what Gouverneur Morris called "those general declarations against all kings, under the name of tyrants," which the National Assembly had enunciated. Nor did the Executive Council lose sight of the restrictions to which the then prevailing system of colonial monopoly subjected the foreign trade of both countries, when, in order to reënforce its proposal, it included in it the suggestion that France and the United States, by excluding from their ports the ships of powers that still maintained "an exclusive colonial and commercial system," would "quickly contribute to the general emancipation of the new world," even though it coupled with the suggestion an appeal to the United States to make "common cause" with France in taking such steps as exigencies might require "to serve the cause of liberty and the freedom of the people."

The attitude of the United States towards questions of this character, as expressed by successive administrations, assumed in the popular as well as in the official mind the form of an established rule of policy. Especially was this the case in regard to the political arrangements of Europe, which, as we have seen, were treated as belonging to what was called the European system, while those of the

independent nations of America were jealously guarded as belonging to the "American system." This distinction the United States, as its author, proponent, and champion, sought not to efface, but to impress upon the world as a derivative of the principle of political non-intervention and a pledge of its consistent observance. No other principle has so distinguished the foreign policy of the United States; and while policies are proverbially subject to mutation, it is probable that the ramifications of that principle will not be wholly overlooked in the consideration of any future plan of concert.

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